United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-1554

B
P/S

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

against

MICHAEL PATERNO, GEORGE DENTI and
PATERNO AND SONS, INC.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

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UNITED STATES COURT OF APPEALS
FILED
JUN 7 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1974

(3912)

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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

- -X

UNITED STATES OF AMERICA,

Appellee,

against

MICHAEL PATERNO, GEORGE DENTI and

PATERNO AND SONS, Inc.,

Defendants-Appellants.

- -X

DOCKET ENTRIES.

Date	Proceedings
5- 3-73	Filed Indictment.
5-21-73	All defts.-Filed notice of appearance by Joseph E. Brill, Esq., 233 B'way, NYC 10007 (Phone 233-6150).
5-21-73	M. Paterno-Deft. (Atty. present) pleads not guilty. Bail fixed at $10,000. P.R.B. Deft. ordered photographed and fingerprinted. G. Denti-Deft. (Atty. present) pleads not guilty. Bail set at $10,000. P.R.B. Deft. ordered photographed and fingerprinted.

DOCKET ENTRIES

Paterno & Sons-(Atty. present) Deft. by Michael Paterno, pleads not guilty. Bail fixed at $10,000. P.R.B.

Case assigned to Judge Frankel. Gannella, J.

5-25-73 DENTI-Filed consent order enlarging defendants bail limits to include passage to Eastern District of New York, District of Connecticut and the District of New Jersey. Frankel, J.

5-25-73 M. PATERNO-Filed consent order enlarging defendants bail limits to include passage to Districts of: Connecticut, New Jersey, Middle Florida and E.D. of N.Y. Frankel, J.

6- 7-73 Michael Paterno-Filed Consent Order extending defendants bail limits to include passage to and from the State of Wisconsin for the period 6-10-73 to 6-24-1973. Frankel, J.

5-21-73 Paterno-Filed P.R.B. in the amount of $10,000. dtd. 5-21-73.

5-21-73 Denti-Filed P.R.B. in the amount of $10,000. dtd. 5-21-73.

6-20-73 All defendants-Filed affdvt. and notice of motion (A) to dismiss indictment (B) to dismiss Cts. 6, 7, 8, 9 (C) for inspection (D) for a bill of particulars.

DOCKET ENTRIES

6-20-73	All defendants-Filed memorandum of law in support of defendants pre-trial motion.
6-21-73	Filed Governments notice of readiness for trial.
7-23-73	ALL DEFTS.-Filed affdvt of J. E. Brill in support of defts' motion.
7-31-73	ALL DEFTS. - Filed memo endorsed on motion of 6-20-73. The Govt. consents to a considerable portion of the demands for discovery and particulars * * * Except as hereinabove granted, this motion is denied. A pretrial conference will be scheduled in Sept. with a view to trying the case in Oct. Frankel, J. Mailed notice.
9- 7-73	ALL DEFTS-Filed Govt's bill of particulars.
9-21-73	ALL DEFTS.-Filed stip & order-Trial set for Feb. 4, 1974 at 10 A.M.-Proposed exam. on voir dire and requests to charge to be filed not later than 1-28-74--Frankel, J.
12-19-73	Filed Govt's proposed examination of prospective jurors.
1- 9-74	Filed memorandum for counsel. Frankel, J. Mailed notice.

DOCKET ENTRIES

2-11-74 Filed affdvt. of J. Lawrence Silverman Special atty. Dept. of Justice in response to Judge Frankel's endorsement of July 31-73.

2-15-74 IN RE James O'Reilly a witness - Filed order that James O'Reilly give testimony which he refuses to give on the basis of his privilege against self incrimination.

* * *

2- 6-74 ALL DEFTS - Jury Trial begun, atty's present.

2- 7-74 Trial cont'd.

2- 8-74 Trial cont'd.

2-11-74 Trial cont'd.

2-13-74 Trial cont'd.

2-14-74 Trial cont'd.

2-15-74 Trial cont'd.

2-19-74 Trial cont'd.

2-20-74 Trial cont'd.

2-21-74 Trial cont'd.

2-22-74 Trial cont'd. & concluded. Deft PATERNO Guilty cts. 1 thru 8. DENTI Guilty 1 thru 5 and 9. PATERNO & SONS, INC. Guilty cts. 1 thru 5. PSI. ordered. Sentence date 4-10-74 Deft's cont'd on present bail pending sentence. Frankel, J.

DOCKET ENTRIES

3- 1-74 MICHAEL PATERNO-Filed consent order extending bail limits. Frankel, J.

3-29-74 Filed transcript of record of proceedings, dated Feb. 6, 7, 8, 11, 1974.

3-29-74 Filed transcript of record of proceedings, dated Feb. 13, 14, 15, 1974.

4-10-74 Filed Opinion #40567: Weighing all the facts together, the Court has concluded that sentences must be imposed as follows: (1) Michael Paterno, on each counts 1-8 a sentence of nine months in prison, the prison sentences to run concurrently. In addition, on each of said eight counts a fine of $2,500, to be cumulated, for a total fine of $20,000. (2) For George Denti, a similar prison sentence - namely, on each of Counts 1-5 and 9, a sentence of nine months in prison to run concurrently. In addition, on each counts 1-5, a fine of $2,000, to be cumulated, for a total fine of $10,000. (3) For deft corporation, Paterno & Sons, Inc. on each counts 1-5, a fine of $5,000, to be cumulated, for a total fine of $25,000. Frankel, J.

DOCKET ENTRIES

(#74,359)

4-10-74 MICHAEL PATERNO - Filed Judgment (Atty. Joseph E. Brill present) deft is committed for imprisonment for a period of NINE (9) MONTHS, on each of counts 1 thru 8 to run concurrently with each other. Deft is fined $2,500 on each of counts 1 thru 8, total fine is $20,000. Deft is released on $10,000. personal recognizance bond pending appeal. Judgment stayed pending appeal. Frankel, J. Entered on 4-15-74.

(#74,358)

4-10-74 GEORGE DENTI - Filed Judgment (Atty. Geilbert Rosenthal present) deft is committed for imprisonment for a period of NINE (9) MONTHS, on each of counts 1 thru 5 and 9 to run concurrently with each other. Deft if fined $2,000 on each of Counts 1 thru 5, total fine is $10,000. Deft is released on $10,000. personal recognizance bond pending appeal. Judgment stayed pending appeal. Frankel, J. Entered on 4-15-74.

DOCKET ENTRIES

4-10-74 PATERNO & SONS, INC. - Filed Judgment (#74,357) Atty. Joseph E. Brill present. It is adjudged that the deft is fined $5,000 on each of counts 1 thru 5, total fine $25,000. Judgment stayed pending appeal. Frankel, J. Entered on 4-15-74.

4-11-74 MICHAEL PATERNO - Filed notice of appeal from judgment of 4-10-74 Copies sent to U. S. Atty's office and deft. Dodge Road, Pawling, New York. Ent. 4-15-74.

4-11-74 GEORGE DENTI - Filed notice of appeal from judgment of 4-10-74. Copies sent to U. S. Atty's office and to deft at Frances Drive Somers, Westchester, N. Y. 10536. Ent. 4-15-74.

4-11-74 PATERNO AND SONS, INC.-Filed notice of appeal from judgment of 4-10-74 copies sent to U.S. ATTY. and Michael Paterno, President R.D. 3 Brewster, N. Y. 10509.

4-17-74 Filed letter dtd. 4-15-74 to Frankel, J. from G. S. Rosenthal, Esq.

4-17-74 Filed letter dtd. 4-11-74 to Frankel, J. from G. S. Rosenthal, Esq.

DOCKET ENTRIES

4-17-74	Filed letter dtd. 4-11-74 from J. Lawrence Silverman Dept. of Justice.
5- 1-74	Filed notice that the record on appeal has been certified and transmitted to the U.S.C.A.
5- 1-74	Filed stipulation designation of exhibits to be transmitted to the U.S.C.A.
5-10-74	Filed transcript of record of proceedings dated Feb. 19-20 - 74.
5-20-74	Filed transcript of record of proceedings dated Feb. 21 - 74.
5-20-74	Filed transcript of record of proceedings dated 2-21-74.
5-20-74	Filed notice that the supplemental record on appeal has been transmitted to the U.S.C.A.

INDICTMENT.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

- -X

UNITED STATES OF AMERICA,

v.

MICHAEL PATERNO, GEORGE DENTI, and

PATERNO & SONS, Inc.,

Defendants.

73 Cr. 419.

- -X

COUNT ONE.

The Grand Jury charges:

1. From on or about March 30, 1965 and continuing thereafter up to the date of the filing of this indictment, in the Southern District of New York and elsewhere, MICHAEL PATERNO, GEORGE DENTI, and PATERNO & SONS, INC., the defendants herein, unlawfully, wilfully and knowingly did combine, confederate and agree together and with each other, and with other persons to the Grand Jury unknown, to commit offenses against the United States, to wit, to violate Title 26, United States Code, Section 7201.

2. It was part of said conspiracy that said defendants and co-conspirators would wilfully attempt to evade and defeat a large part of the income taxes to be due and owing to the United States of America by the defendant PATERNO & SONS, INC. for the fiscal years ending February 28, 1966, February 28, 1967, February 29, 1968, February 28, 1969, and February 28, 1970.

3. At all times mentioned in this indictment MICHAEL PATERNO was the President of Paterno & Sons, Inc., and at all times mentioned in this indictment GEORGE DENTI was an officer and employee of PATERNO & SONS, INC.

4. Among the means whereby said defendants would carry out the said conspiracy were the following:

(a) The defendant MICHAEL PATERNO would sign corporate checks of PATERNO & SONS, INC. as maker payable to fictitious payees.

(b) From time to time the defendant GEORGE DENTI would endorse corporate checks in the names of fictitious payees and would also authorize bank officials to approve the cashing of corporate checks which were made payable to fictitious payees.

(c) The defendants MICHAEL PATERNO, GEORGE DENTI, and PATERNO & SON, INC. would unlawfully, wilfully, and

knowingly attempt to evade and defeat and cause to be evaded and defeated a large portion of the corporate income tax due and owing by said corporation by preparing and causing to be prepared false and fraudulent income tax returns for and on behalf of said corporation, wherein checks made payable to fictitious payees were deducted as business expenses, whereas the defendants then and there well knew no such expenses had been incurred.

OVERT ACTS.

In furtherance of said conspiracy and to effect the objects thereof, the defendants, in the Southern District of New York and elsewhere, committed and caused to be committed the following:

1. On or about February 20, 1967 GEORGE DENTI, endorsed in the name of Thomas Tuccella, PATERNO & SONS, INC. check #9849, in the amount of $3,468.60, payable to Thomas Tuccella.

2. On or about February 20, 1967 MICHAEL PATERNO, signed as maker, PATERNO & SONS, INC. check #9849, in the amount of $3,468.60, payable to Thomas Tuccella.

3. On or about May 16, 1967 MICHAEL PATERNO signed his name to the PATERNO & SONS, INC. Corporate Income Tax Return for fiscal year ending February 28, 1967.

INDICTMENT

4. On or about August 16, 1968 MICHAEL PATERNO signed his name to the PATERNO & SONS, INC. Corporate Income Tax Return for fiscal year ending February 29, 1968.

5. On or about August 16, 1969 MICHAEL PATERNO signed his name to the PATERNO & SONS, INC. Corporate Income Tax Return for fiscal year ending February 28, 1969.

6. On or about August 19, 1970 MICHAEL PATERNO signed his name to the PATERNO & SONS, INC. Corporate Income Tax Return for fiscal year ending February 28, 1970.

7. On or about February 27, 1967 GEORGE DENTI spoke to Gaeton Andretta, then a Vice President of Royal National Bank, and GEORGE DENTI approved the cashing of PATERNO & SONS, INC. checks #9813, payable to John Aurrichio in the amount of $8,501.35, #9839, payable to Arthur Lazravitch in the amount of $3,812.00 and $9849 payable to Thomas Tuccella in the amount of $3,468.60.

8. On or about August 16, 1967, MICHAEL PATERNO, signed as maker PATERNO & SONS, INC. check $10894 in the amount of $4,342.23 payable to Anthony Ferrotta.

INDICTMENT

9. On or about February 2, 1968, MICHAEL PATERNO, signed as maker PATERNO & SONS, INC. check #11823 in the amount of $2,000.00 payable to Michael Catenzaro.

10. On or about December 15, 1969, MICHAEL PATERNO signed as maker PATERNO & SONS, INC. check #4078 in the amount of $7,119.36 payable to Anthony Ferrotta.

(Title 18, United States Code, Section 371)

COUNTS TWO THROUGH FIVE.

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, PATERNO & SONS, INC., a corporation, MICHAEL PATERNO, who was then the President of PATERNO & SONS, INC., and GEORGE DENTI, who was then the Se cretary-Treasurer of the said corporation, the defendants, unlawfully, wilfully and knowingly did attempt to evade and defeat and cause to be evaded and defeated a large portion of the corporate income tax due and owing by PATERNO & SONS, INC. to the United States of America for the said corporation's fiscal year ending on the 28th day of February, 1967, 29th day of February, 1968, 28th day of February, 1969, 28th day of February, 1970, respectively, by preparing and causing to be prepared,

and filing and causing to be filed with the Internal Revenue Service, a false and fraudulent corporate income tax return for and on behalf of the said corporation, wherein it was stated that the said corporation's taxable income for each respective fiscal year was the amount hereinafter set forth, and that the amount of income tax due and owing thereon was the amount hereinafter set forth, whereas, as said defendants then and there well knew, the said corporation's taxable income for the respective fiscal year was approximately the amount hereinafter set forth, upon which said taxable corporate income there was due and owing to the United States of America an income tax of the approximate amount hereinafter set forth:

COUNT	FISCAL YEAR	TAXABLE INCOME REPORTED	TAX STATED ON RETURN	ACTUAL TAXABLE INCOME	ACTUAL TAX OWED	DATE
2	2-28-67	$100,562.00	$ 41,105.00	$136,986.40	$ 58,588.47	5-16-67
3	2-29-68	49,504.00	17,481.00	109,041.10	46,522.59	8-16-68
4	2-28-69	199,913.00	97,750.00	240,307.86	119,078.55	8-16-69
5	2-28-70	247,394.00	122,567.00	259,335.46	128,825.57	8-19-70

(Title 26, United States Code, Section 7201)

INDICTMENT

COUNTS SIX THROUGH EIGHT.

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, MICHAEL PATERNO, the defendant, who was then the President of PATERNO & SONS, INC., unlawfully, wilfully and knowingly did make and cause to be made and subscribe the income tax return of the said corporation for the said corporation's fiscal year ending on the 28th day of February, 1967, 29th day of February, 1968, and 28th day of February, 1969, respectively, which return contained and was verified by a written declaration that it was made under the penalties of perjury, and which he did not believe to be true and correct as to certain material matters, namely, the amount of the said corporation's equipment rentals deductions and equipment repair deductions entered therein, in that, as he then and there well knew, the said corporation's equipment rentals deductions and equipment repair deductions were less than the respective entered amounts:

INDICTMENT

COUNT	FISCAL YEAR	EXPENSE REPORTED	NET EXPENSES OVERSTATED	DATE	TYPE OF EXPENSE
6	2-28-67	$217,289.00	$36,424.40	5-16-67	Equipment Rental
7	2-29-68	227,536.00	57,471.61	8-16-68	Equipment Rental
	2-29-68	44,845.00	2,065.49	8-16-68	Repairs
8	2-28-69	156,620.00	40,394.86	8-16-69	Equipment Rental

(Title 26, United States Code, Section 7206(1))

COUNT NINE.

The Grand Jury further charges:

On or about the date hereinafter set forth, in the Southern District of New York, GEORGE DENTI, the defendant, who was then the Secretary Treasurer of PATERNO & SONS, INC., unlawfully, wilfully and knowingly did make and cause to be made and subscribe the income tax return of the said corporation for the said corporation's fiscal year ending on the 28th day of February, 1970, which return contained and was verified by a written declaration that it was made under the penalties of perjury, and which he did not believe to be true and correct as to certain material matters, namely, the amount of the said corporation's equipment rentals and equipment repair

deductions entered therein, whereas, as he then and there well knew, the said corporation's equipment rentals deductions and equipment repair deductions was less than the respective entered amount:

COUNT	FISCAL YEAR	EXPENSE REPORTED	NET EXPENSE OVERSTATED	DATE	TYPE OF EXPENSE
9	2-28-70	$185,241.00	$11,941.46	8-19-70	Equipment Rental

(Title 26, United States Code, Section 7206(1))

FOREMAN

WHITNEY NORTH SEYMOUR, JR.
United States Attorney

NOTICE OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA

-v-

MICHAEL PATERNO,
GEORGE DENTI, and
PATERNO & SONS, INC.,

Defendants.

73 Cr. 419

NOTICE OF MOTION

----------x

S I R :

PLEASE TAKE NOTICE that upon the indictment and the affidavit of JOSEPH E. BRILL, sworn to the 20th day of June, 1973, and all the proceedings heretofore had herein, a motion will be made and submitted to Hon. MARVIN E. FRANKEL, United States District Judge, at the Court House, Foley Square, New York, N. Y., for an order:

A

Dismissing the indictment herein pursuant to the Fifth and Sixth Amendments to the United States Constitution on the grounds that (1) the defendants were not afforded the administrative procedures provided for in the regulations of the Internal Revenue Service, its manuals and established practices as pre-requisites to indictment for tax offenses,

NOTICE OF MOTION

the indictment having been found in violation of defendants' rights to due process of law and (2) other rights guaranteed under the Fifth and Sixth Amendments to the United States Constitution, including their rights under Miranda v. Arizona 384 U.S. 436 (1966), or in the alternative directing that a hearing be held and testimony be taken for the determination of such issues of fact or law which may exist and which may properly be determined at a hearing, and on such a hearing and after such hearing, dismissing the indictment herein on the grounds that the indictment was found in violation of defendants' constitutional rights under the Fifth and Sixth Amendments, or in the alternative suppressing any statements made by the defendants and any or all evidence which were the fruits of such statements;

B

Pursuant to Rules 7(c) and 12 of the Federal Rules of Criminal Procedure dismissing Counts Six, Seven, Eight and Nine of the indictment;

* * *

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' PRE-TRIAL MOTIONS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA

-v-

MICHAEL PATERNO, GEORGE DENTI, and PATERNO & SONS, INC., 73 Cr. 419

Defendants.
----------x

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' PRE-TRIAL MOTIONS

INTRODUCTION

The indictment herein was filed on May 3, 1973 and contains nine counts. The defendants were arraigned on May 21, 1973 and entered a plea of not guilty to the charges alleged against them.

Count One charges that the defendants from on or about March 30, 1965 to the date of the filing of this indictment conspired to evade and defeat income taxes alleged to be due and owing by the corporate defendant for the fiscal years ended 2-28-66, 2-28-67, 2-29-68, 2-29-69 and 2-28-70.

Counts Two through Five charge the defendants with

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' PRE-TRIAL MOTIONS

wilfully and knowingly attempting to and in fact evading and defeating taxes alleged due and owing by Paterno & Sons, Inc. for the fiscal periods ended 2-28-67, 2-29-68, 2-28-69 and 2-28-70 respectively.

Counts Six through Eight allege that defendant Michael Paterno was the President of Paterno & Sons, Inc. at the time he purportedly subscribed his name to the income tax returns of Paterno & Sons, Inc. for the fiscal years ended 2-28-67, 2-29-68, 2-28-69 and that such subscription was in violation of 26 United States Code 7206(1) in that he allegedly did not believe the returns to be true and correct as to certain material matters. Each subscription is alleged in a separate count.

Count Nine involves the same basic allegation as Counts Six through Eight but alleges that George Denti, purportedly the then Secretary-Treasurer of Paterno & Sons, Inc. subscribed his name to the corporate income tax returns for the fiscal year ended 2-28-70 in violation of 18 United States Code 7206(1).

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' PRE-TRIAL MOTIONS

POINT I

DEFENDANTS WERE ENTITLED TO AND WERE NOT AFFORDED THEIR RIGHT TO ADMINISTRATIVE HEARING AND REVIEW WHICH ARE PROVIDED AS A MATTER OF ESTABLISHED PROCEDURE AND WERE THEREBY DENIED DUE PROCESS AND THE RIGHT TO COUNSEL UNDER THE FIFTH AND SIXTH AMENDMENTS.

A tax fraud investigation usually arises out of a civil audit of a taxpayer's return by a revenue agent. If a revenue agent suspects fraud, and his supervisor concurs, he suspends the civil audit and the investigation is transferred to a special agent of the IRS Intelligence Division whose job is limited to obtaining evidence to support a criminal tax fraud prosecution.

When the special agent enters into the picture, the investigation has shifted from a civil to a criminal one. The special agent's efforts are directed only to the development of a prima facie case of a violation of the Revenue Laws. See Duke, Prosecutions for Attempts to Evade Income Tax: A Discordant View of a Procedural Hybrid, 76 Yale L.J. 1 (1966).

Several levels of administrative review are pro-

They commence with the requirement imposed upon the special agent to give the target an opportunity to be heard to persuade the IRS not to recommend prosecution (Internal Revenue Service Regulation §601.107(b)(2). Appellate reviews at the offices of the IRS Assistant Regional Counsel for Enforcement as well as at the Department of Justice are provided in the event that the Assistant Regional Commissioner, Intelligence, has concurred in the recommendation for prosecution. Hearings and conferences are provided at the later appellate levels, as in the earlier stages, at which time the taxpayer may have the advice and assistance of counsel in making arguments of fact and law on his behalf. These procedures are well publicized. They are also published and are described in detail in numerous learned articles, e.g., How Internal Revenue Service View the Practitioner's Role in the Criminal Enforcement Program, Donald W. Bacon, Assistant Commissioner Internal Revenue Service, 34 Journal of Taxation, 198-200 (April 1971); Andrews, The Right to Counsel in Criminal Tax Investigations Under Escobedo and Miranda: The Critical Stage, 53 Iowa L.Rev. 1074 (1968); 9 Mertens, Law of Federal Income Taxation, 4946, 4953; Balter, Tax Fraud and Evasion, 5-21 (3rd Ed. Ronald Press,

1963); Goodrich, Redman & Quiggle, Procedures Before the Internal Revenue (ALI-ABA 1965); Lyon, Government Power and Citizen's Right in a Tax Investigation, 25 The Tax Lawyer, 79 (ABA Fall 1971).

Upon information and belief, these procedures are provided for in the Regional Counsel Enforcement Manual and certain Internal Revenue Service Manuals for which production defendants will move the Court should the Court deem a hearing on this matter necessary.

The defendants were deprived of opportunity to be heard at the various levels. The arguments of fact and law which would have been proffered on their behalf were therefore not taken into account of the decisional process resulting in the decision to prosecute. Upon information and belief, a great percentage of recommendations for prosecution by special agents are rejected after appropriate hearings and conferences at various levels.

In a similar motion made before Judge Judd in United States v. Goldstein et al, 72 Cr. 18 (E.D.N.Y. 1972), the movants relied on 26 USC 7122(a), which authorizes compromise of criminal cases under the income tax laws, an authority not given in most other criminal cases. That

statute provides in part:

> "(a) Authorization. -- The Secretary or his delegate may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense."

In his memorandum opinion, Judge Judd stated that in

> "United States v. McCue, 178 F.Supp. 426,434 (D. Conn. 1969), aff'd (without mentioning this point), 301 F.2d 452 (2d Cir.), cert. denied, 370 U.S. 939, 82 S.Ct. 1586 (1962), Judge Anderson held that a compromise agreement concerning civil liability did not justify dismissal of an indictment. Judge Anderson stated (p.434):
>
> > 'The purpose of the statute was to facilitate the money settlement of tax liabilities. The use of the disjunctive in the phrase to "compromise any civil or criminal case" was intended to take care of circumstances where criminal charges have been brought or a criminal prosecution has actually been commenced but no formal action has been taken with regard to the civil liabilities and an agreement has been reached covering both the civil and criminal aspects.'
>
> Section 7122 in any event merely authorizes the compromise of a criminal case, and does not in itself create any right to pre-indictment conferences."

Judge Judd subsequently stated that

> "[p]rovision for a conference at the Special Agent level is contained in the published regulations (Federal Tax Regulations (West Pub. Co. 1971)) governing Internal Revenue practices, which provide in §601.107(b)(2):
>
> > Every person who may be the subject of a recommendation for prosecution shall be given an opportunity to explain his participation in the alleged criminal violation prior to the submission of the case to Regional Counsel, unless compelling reasons exist to the contrary. (Emphasis added)."

He concluded that such provision merely serves a purpose "related to efficiency, in avoiding prosecution of cases which may not really merit criminal prosecution. It is not clear that the procedure is intended to confer rights on a taxpayer."

While it may be true that the purpose of 26 USC 7122(a) relates to the protection and collection of revenue, and that compromise consideration was supplied only by the civil aspect of the case, it is strongly urged that §601.107(b)(2) mandates the hearing and conference procedure unless there is a showing by the prosecution of compelling reasons to the contrary. Here there is no basis for the assertion of the existence of such reasons.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' PRE-TRIAL MOTIONS

in this c The regulations promulgated and published by the Internal Revenue Service have the full force and effect of law. The regulation here is a vital procedural provision which governs the administrative conduct of criminal tax cases. If it is not afforded the defendants, the procedural due process deprivation is clear. See United States ex rel Accardi v. Shaughnessy, 347 U.S. 260 (1954); United States v. Lockyer, 448 F.2d 417 (10th Cir. 1971). The Internal Revenue Service must scrupulously observe rules, regulations or procedures which it has established. See United States v. Heffner, 420 F.2d 807 (4th Cir. 1970). The failure to observe its established procedure also deprived the defendants of their right to counsel since the denied procedure would have permitted advocacy on their behalf.

On or about July 28, 1971 the testimony of defendant George Denti was taken by Revenue Agent Rizzo and Special Agent Ayres. That testimony was recorded. While Miranda warnings may have been given to Mr. Denti, he was not apprised that he and the other defendants in this case were the targets of any criminal tax investigation. On the contrary, as we are informed, Revenue Agent Rizzo steadfastly maintained from the commence[illegible] of the investigation

in this case that the target was an employee of the corporate defendant.

Ayres and Rizzo did not comply with the Internal Revenue Service Press Release of October 3, 1967 describing "its procedures for protecting the constitutional rights of persons suspected of tax fraud." That release stated, inter alia:

> "Instructions issued to IRS Special Agents go beyond most legal requirements to assure that persons are advised of their Constitutional rights.
>
> On initial contact with a taxpayer, IRS Special Agents are instructed to produce their credentials and state: 'As a Special Agent, I have the function of investigating the possibility of criminal tax fraud.'
>
> If the potential criminal aspects of the matter are not resolved by preliminary inquiries and further investigation becomes necessary, the Special Agent is required to advise the taxpayer of his Constitutional rights to remain silent and to retain counsel.
>
> If it becomes necessary to take a person into custody, Special Agents must give a comprehensive statement of rights before any interrogation. This statement warns a person in custody that he may remain silent and that anything he says may be used against him. He is also told that he has the right to consult or have present his own counsel before making a statement or answering any questions, and that if he cannot afford counsel he can have one appointed by the U.S. Commissioner.
>
> IRS said although many Special Agents had in the past advised persons, not in custody, of their privilege to remain silent and retain counsel, the recently adopted procedures

> insure uniformity in protecting the Constitutional rights of all persons." (Emphasis supplied)

In United States v. Heffner, supra, the court held that where subsequent to publication of IRS instructions to special agents for protecting the constitutional rights of persons suspected of criminal tax fraud, an agent who interviews a defendant without giving a warning that the special agent had the function of investigating the possibility of criminal tax fraud, was reversible error. The Court stated at 811-813:

> "An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down. This doctrine was announced in United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954). There, the Supreme Court vacated a deportation of the Board of Immigration because the procedure leading to the order did not conform to relevant regulations. The failure of the Board and of the Department of Justice to follow their own established procedures was held a violation of due process.
>
> * * * *
>
> It is of no significance that the procedures or instructions which the IRS has established are more generous than the Constitution requires.
>
> * * * *
>
> As the Second Circuit said in Hammond v. Lenfest, 398 F.2d at 715, cited with approval in United States ex rel. Brooks v. Clifford, 409 F.2d at 730, [illegible] procedures 'cannot be reconciled with the

> fundamental principle that ours is a government of laws, not men.' The arbitrary character of such a departure is in no way ameliorated by the fact that the ignored procedure was enunciated as an instruction in a 'News Release.' The document purports to establish certain procedures which Special Agents are 'required' to follow. Undoubtedly, a failure to comply is a rare event within the Intelligence Division - a fact which highlights the apparently inadvertent failure to give the required warnings here. Furthermore, a reversal here would not only have the salutary effect of encouraging IRS agents to observe their own procedures, L. Jaffe, Judicial Control of Administrative Action 369 (1965), cited with approval in Smith v. Resor, 406 F.2d at 146, but would assist the IRS in fulfilling its own important stated purpose in requiring that the warnings be given. For the announcement of the instructions was coupled with the justification that they would insure 'uniformity in protecting the Constitutional rights of all persons.'" (Emphasis supplied)

The above noted principles were reaffirmed in United States v. Lockyer, supra; Leahey v. United States, 434 F.2d 7 (1st Cir. 1970), and Bembridge v. United States, 458 F.2d 1262 (1st Cir. 1972).

Relying on the principle that due process requires government agencies to follow their own established procedures and the Fourth Circuit's opinion in United States v. Heffner, the District Court in Leahey granted the motion to suppress. In upholding the District Court's suppression

order, the First Circuit held that for a conjunction of two reasons, due process required the IRS to follow the procedures announced in its October 3, 1967 press release. It said:

> "The first is that announced in the press release as the objective of uniform conduct by all Agents .....
> The second reason is that the October 3rd press release was a deliberate response to a number of inquiries for the expressed purpose of protecting taxpayer's Constitutional rights and was made public to be relied upon by the taxpayers and lawyers." (434 F.2d at page 10)

On November 26, 1968 the Internal Revenue Service expanded its October press release to require Special Agents to give taxpayers criminal warnings on initial contact. Its press release of that date stated:

> "One function of a Special Agent is to investigate possible criminal violations of Internal Revenue laws. At the initial meeting with a taxpayer, a Special Agent is now required to identify himself, describe his function, and advise the taxpayer that anything he says may be used against him. The Special Agent will also tell the taxpayer that he cannot be compelled to incriminate himself by answering any questions or producing any documents, and that he has the right to seek the assistance of an attorney before responding." (Emphasis supplied)

The defendants here were denied their due process rights. They were not afforded the hearings provided for

at the various levels discussed above prior to their indictment.

In view of the foregoing, the indictment should be dismissed.

POINT II

COUNTS SIX, SEVEN, EIGHT AND NINE OF THE INSTANT INDICTMENT MUST BE DISMISSED PURSUANT TO RULES 7(c) AND 12 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.

Rule 7(c) of the Federal Rules of Criminal Procedure provides, inter alia:

> "The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged."

The rule effectuates three constitutional provisions: the Sixth Amendment right to be informed of the nature and cause of the accusation; the Fifth Amendment protection (1) against being put in jeopardy twice for the same offense and (2) insurance that the indictment was found by the grand jury rather than merely the interpolation of the prosecutor. Russell v. United States, 369 U.S. 749, 764 (1962) and Standard Oil Co. of Texas v. United States, 307 F.2d 120, 130 (5th Cir. 1962).

An indictment therefore must assert the crime charged and set forth the essential elements of it. The indictment must recite the acts attributed to a defendant in a manner adequately safeguarding his right from being placed in jeopardy twice.

Counts Six through Nine in this indictment are defective in that they fail materially to state an essential element, namely, that the income tax returns in question are the United States income tax returns of the corporate defendant.

Counts Six through Nine therefore fail to identify the offense with sufficient definiteness to protect the defendants from double jeopardy. The counts contain only the language of the statute - Section 7206(1) of Title 26 United States Code. However, an offense must be stated with greater particularity than is found in a statutory definition too general in terms to identify the crime charged. See Keck v. United States, 172 U.S. 434. It is not sufficient to charge an offense in the words of the statute unless the words themselves fully, directly and expressly and without uncertainty or ambiguity set forth the essential elements constituting the offense intended

to be punished. United States v. Carll, 105 U.S. 611, 612.

Section 7206(1) of Title 26 United States Code is general in terms. The counts in question do not set forth with certainty all the essential elements necessary to constitute the offense. The indictment therefore is vague and indefinite with respect to these counts which must be dismissed.

Judge Weinfeld in United States v. Pope, 189 F.Supp. 12 (S.D.N.Y. 1960), stated that the

> "true test is whether the indictment sufficiently apprises the defendants of the crimes charged against them so as to enable them to prepare their defense and to plead any judgment entered thereunder as a bar to further prosecution for the same offense."

Judge Weinfeld further noted that

> "[w]here a violation of a statute is charged, an indictment in the language of the statute is ordinarily sufficient, an exception being where the statute includes by implication an essential element of the offense [citations omitted].
>
> However, where the statute is couched in general terms, the indictment must particularize the offense sufficiently to inform the defendant of the accusation he must meet (citations omitted)." (Emphasis supplied)

See Russell v. United States, supra, at 764-772; United States v. Hess, 124 U.S. 483 (1888); United States v. Carll,

supra; United States v. Cruikshank, 92 U.S. 542, 568-569 (1875).

In United States v. Cruikshank the High Court said at page 558:

> " It is an elementary principle of criminal pleading, that where the definition of an offence, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition; but it must state the species,- it must descend to particulars."

It is anticipated that in an effort to support the defective counts it may be urged that since the indictment alleges the returns to be "income tax returns", they meet the requirements of law. However, the counts fail to meet the mandatory requirement that each one of them alleges with sufficient particularity the offense with which the defendants are sought to be charged, convicted and punished. The indictment with respect to each of such counts is alleged in categorical terms which are impermissibly broad and therefore must be dismissed.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' PRE-TRIAL MOTIONS

CONCLUSION

DEFENDANTS' MOTIONS SHOULD IN ALL RESPECTS BE GRANTED.

Respectfully submitted,

JOSEPH E. BRILL
Attorney for Defendants

AFFIDAVIT OF J. LAWRENCE SILVERMAN IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v - : AFFIDAVIT IN OPPOSITION

MICHAEL PATERNO, : 73 Cr. 419
GEORGE DENTI, and
PATERNO & SONS, INC., :

Defendants. :

----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

J. LAWRENCE SILVERMAN, being duly sworn, deposes and says:

1. I am a Special Attorney with the United States Department of Justice assigned to the prosecution of the above-captioned matter, and, as such, am familiar with the facts herein.

2. I make this affidavit in response to Defendants' pre-trial motions for dismissal of the indictment, certain discovery and inspection, and for a bill of particulars.

PRIOR PROCEEDINGS

3. On May 3, 1973, the indictment in this case was filed and the defendants appeared with counsel on May 21, 1973, and entered pleas of not guilty. The defendants in this matter were released on bond.

A and B

Answered in Government's Memorandum of Law in support of Affidavit in Opposition.

* * *

F

CONCLUSION

The Government has consented herein to extensive discovery and inspection within the purview of Rule 16 of the Federal Rules of Criminal Procedure. This discovery, coupled with a very simple and specific indictment, it is submitted, should be enough to allow the defendants an adequate opportunity to prepare for trial. Further reasons for the Government's opposition to some of the defendants requests are set forth in detail in the accompanying memorandum of law.

WHEREFORE, the Government respectfully requests that the defendant's motions for dismissal of the indictment, pre-trial discovery and particulars be denied, except as consented to herein.

J. LAWRENCE SILVERMAN
Special Attorney
U. S. Department of Justice

Subscribed and sworn to before me

day of July, 1973.

MEMORANDUM OF LAW IN RESPONSE TO DEFENDANTS' PRE-TRIAL MOTIONS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

- v - : 73 Cr. 419

MICHAEL PATERNO, :
GEORGE DENTI and
PATERNO & SONS, INC., :

Defendants :

----------x

MEMORANDUM OF LAW IN RESPONSE TO DEFENDANTS' PRE-TRIAL MOTIONS

This memorandum is submitted in opposition to defendants' motion for:

1. Motion to Dismiss the Indictment pursuant to the Fifth and Sixth Amendments to the United States Constitution.

2. Motion to Dismiss Counts Six, Seven, Eight and Nine of the indictment pursuant to Rules 7(c) and 12 of the Federal Rules of Criminal Procedure.

3. Discovery and Inspection pursuant to Rules 16(a) and 16(b) of the Federal Rules of Criminal Procedure.

POINT I

The defendants are not entitled to additional administrative hearings and review and were not denied due process under the 5th and 6th Amendments

The defendants argue that the indictments against them should be dismissed because they were not afforded the necessary conferences at the various administrative levels of the Internal Revenue Service prior to indictment. These arguments were flatly rejected in United States v. Goldstein, 342 F. Supp. 661 (E.D.N.Y. 1972) and recently before Judge Tyler in United States v. Steinman, 73 Cr. 216, June 29, 1973. The Goldstein case clearly concludes that where the Internal Revenue Service considers it is not in the Government's interest to make any disclosure, there is no obligation to hold a conference at any level.

The defendants rely on United States ex rel Accardi v. Shaughnessy, 347 U.S. 260 (1954) and United States v. Lackyer, 448 F.2d 417 (10th Cir. 1971) as supporting their claim that since the defendants were not afforded pre-indictment conferences with the Internal Revenue Service, their procedural due process rights had been violated. In the Accardi case the Petitioner did not have the protection of a full trial at the end of the plenary deportation procedure. The Board of Immigration Appeals failed to exercise its own administrative

discretion because it had been informed by the Attorney General prior to their determination that the Petitioner should be deported. The Lackyer case holds that evidence should not be supressed even though the taxpayer had not been warned of right of counsel and right to remain silent.

The established procedure referred to in United States v. Heffner, 420 F.2d 807 (4th Cir. 1970) cited by the defendant does not involve right to counsel at pre-indictment conferences. Heffner involves a failure of the Special Agent to warn the taxpayer that he was investigating a possibility of a criminal tax fraud and the right to retain counsel before speaking to him.

The defendants cite United States v. Leahey, 434 F.2d 7 (1st Cir. 1970) and Heffner as relating to pre-indictment situations. These cases refer to the use at trial of statements made at conferences, not of the grand jury's right to indict the defendants.

POINT II

Counts Six, Seven, Eight and Nine of This Indictment Should Not Be Dismissed

The defendants claim that "Counts Six through Nine are defective in that they fail materially to state an essential element, namely, that the income tax returns in question are the United States income tax returns of the corporate defendant."

Counts Six through Eight state: "On or about the dates hereinafter set forth in the Southern District of New York, MICHAEL PATERNO, the defendant who was then the President of Paterno & Sons, Inc., unlawfully, wilfully and knowingly did make and cause to be make and subscribe the income tax return of said corporation...(Title 26, United States Code, Section 7206(1).)

Count Nine of the indictment states: "On or about the dates hereinafter set forth in the Southern District of New York, GEORGE DENTI, the defendant who was then the President of Paterno & Sons, Inc., unlawfully, wilfully and knowingly did make and cause to be made and subscribe the income tax return of said corporation..." (Title 26, United States Code, Section 7206(1).)

In Counts Six, Seven, Eight and Nine the defendants are charged with Title 26, United States Code, Section 7206(1). This Section can only refer to subscribing one type of income tax return, namely a Federal income tax return.

The indictment sufficiently apprises the defendants of the crimes charged against them so that they can properly prepare a defense. In Counts One through Five, the defendants are charged with conspiracy and the attempt to evade and defeat a large part of the income taxes due and owing the United States of America. These conspiracy and evasion counts refer to the same returns for the same years that Counts Six through Nine refer to. There clearly is no confusion that the defendants will be put in jeopardy twice for the same offense nor that the indictment was the interpretation of the prosecutor rather than found by the grand jury as charged by the defendants.

POINT III

Defendants' Motion For Discovery And Inspection Should Be Denied Except As Consented to by the Government

The Government consents to allow all moving defendants an inspection of any and all relevant statements or confessions written or recorded made by the moving party,

which are known to the Government. The Government does not consent to allow the defendants an inspection of any statements by third parties. In United States v. Montzaris, 69 Cr. 872 (S.D.N.Y.) February 3, 1970 and United States v. Beck, 69 Cr. 849 (S.D.N.Y.) February 24, 1970, Judge Weinfeld rejected the defendants' contention that they were entitled to an inspection of third parties' statements, including those which might purport to set forth conversations with the defendant. See also United States v. Crisona, 416 F.2d 107 (2d Cir. 1969); United States v. Dorfman, 53 F.R.D. 478 (S.D.N.Y. 1971). It is entirely possible that the Government will call such a third party as a witness at trial. In that case, Title 18, United States Code, Section 3500 makes it clear that the defendants are not entitled to any statements of such witnesses until he has testified on direct. Nor are defendants entitled to any statements made by co-conspirators before the grand jury. United States v. Kahaner, 203 F. Supp. 78 (S.D.N.Y.) aff'd, 317 F.2d 459 (2d Cir. 1962), cert. denied, 375 U.S. 836.

* * *

CONCLUSION

Defendants' motions to dismiss, for a bill of particulars and/or discovery and inspection and other motions should be denied except as consented to.

Respectfully submitted,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

J. Lawrence Silverman
Special Attorney
U. S. Department of Justice
of Counsel

BILL OF PARTICULARS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

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UNITED STATES OF AMERICA	:	
- v -	:	BILL OF PARTICULARS
MICHAEL PATERNO GEORGE DENTI PATERNO & SONS, INC.	:	73 Cr. 419
Defendants	:	

----------x

PLEASE TAKE NOTICE that the Government as and for its Bill of Particulars heretofore ordered by the Court, herein alleges:

1. ANTHONY J. RIZZO is currently an Internal Revenue Agent, Internal Revenue Service, and has held this position during the years 1970-1973.

A. Walter Ayres is currently a Special Agent, Internal Revenue Service, and has held this position during the years 1970-1973.

2. The only co-conspirators known to the Grand Jury are:

A. JAMES O'REILLY

B. VINCENT O'REILLY

C. THOMAS CAHILL

D. CONRAD HOFFMAN

BILL OF PARTICULARS

3. The following federal corporate income tax returns were filed on or about the dates hereinafter set forth:

Calendar Year	Period Ending	Date Received by I.R.S.
1965	Feb. 28, 1966	May 16, 1966
1966	Feb. 28, 1967	May 16, 1967
1967	Feb. 29, 1968	Aug. 16, 1968
1968	Feb. 28, 1969	May 16, 1969
1969	Feb. 28, 1970	Aug. 19, 1970

4. The Government states that among those that are alleged to be fictitious payees are Thomas Tuccella, John Aurrichio, Arthur Lazravitch, Anthony Ferrotta.

5. The Government states that with respect to the corporate income tax returns of PATERNO & SONS, INC., for the years ended February 28, 1967, February 29, 1968, February 28, 1969 and February 28, 1970, the Government does not intend to offer proof of any omissions of specific receipts of income.

6. The Government states that with respect to the returns for the fiscal years ended February 28, 1967, February 29, 1968, February 28, 1969 and February 28, 1970, the following entries will be claimed fraudulent:

Calendar Year	Fiscal Year Ended	Lines on the Returns that Contain Fraudulent Items
1965	Feb. 28, 1966	Lines 2,3,11,14,26,27,28, 30,31,33
1966	Feb. 28, 1967	Lines 2,3,11,14,26,27,28, 30,31,33

BILL OF PARTICULARS

1967	Feb. 29, 1968	Lines 2,3,11,14,26,27,28, 30,31,33
1968	Feb. 28, 1969	Lines 2,3,11,14,26,27,28, 30,31,33
1969	Feb. 28, 1970	Lines 2,3,11,14,26,27,28, 30,31,33

7. The amount of additional taxable income claimed to be wilfully understated for the following years are hereinafter set forth:

Fiscal Year Ended	Amount of Additional Taxable Income
2/28/67	$35,424.40
2/29/68	59,537.10
2/28/69	40,394.86
2/28/70	11,941.46

8. The amount of actual additional tax the defendants wilfully attempted to defeat for the following years are hereinafter set forth:

Fiscal Year Ended	Amount of Actual Additional Tax
2/28/67	$17,483.47
2/29/68	29,091.59
2/28/69	21,328.55
2/28/70	6,258.57

BILL OF PARTICULARS

9. The Government states it will introduce evidence with respect to prior and subsequent years mentioned in the indictment.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By: _____
J. LAWRENCE SILVERMAN
Special Attorney
U. S. Department of Justice

MEMORANDUM BY FRANKEL, J., OF 7/31/73.

Re: United States v. Paterno, et al., 73 Cr. 419

Endorsement

The Government consents to a considerable portion of the demands for discovery and particulars. Beyond the things consented to, the particulars sought in items numbered 12 and 32 will be supplied.

The Government in a standard recital says it knows its obligations under Brady v. Maryland, 373 U.S. 83 (1963), and that this is enough said. Never doubting the good faith with which the formula is reiterated, the court finds increasingly that this is not really enough. As a reminder to the Government and assurance to defendants, government counsel will serve and file, no later than three days before the trial is to begin, an affidavit stating what measures have been taken to ensure compliance with Brady.

Except as hereinabove granted, this motion is denied.

Counsel should consult during the coming month and present to the court if possible a joint estimate of the expected length of the trial. If that is not possible, each side should submit a letter giving its judgment on this. A pretrial conference will be scheduled in September with a view to trying the case in October 1973.

The foregoing embodies the court's order.

Dated: New York, New York
July 31, 1973

MARVIN E. FRANKEL

U.S.D.J.

1-112

TRANSCRIPT.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

MICHAEL PATERNO, GEORGE DENTI and PATERNO & SONS, INC.,

Defendants.

73 Cr. 419

Before:

HON. MARVIN E. FRANKEL,

District Judge
and a Jury

New York, February 6, 1974
Room 128 - 10:00 a.m.

APPEARANCES:

PAUL J. CURRAN, Esq.,
United States Attorney for the
Southern District of New York,
By: LAWRENCE SILVERMAN, Esq.,
Assistant United States Attorney

JOSEPH E. BRILL, Esq.,
and
JOSEPH B. Ehrlich, Esq.,
Attorneys for Defendants Michael Paterno and
Paterno & Sons, Inc.

GILBERT ROSENTHAL, Esq.,
Attorney for Defendant George Denti

- - -

THE CLERK: United States of America v Michael Paterno, George Denti and Paterno & Sons, Inc..

Government ready?

MR. SILVERMAN: The government is ready.

THE CLERK: Defendant Michael Paterno ready?

MR. BRILL: Yes.

THE CLERK: And Paterno & Sons ready?

MR. BRILL: Yes.

THE CLERK: And defendant George Denti?

MR. ROSENTHAL: Yes.

THE COURT: Mr. Silveman, before impanelling a jury, are there some preliminary things that you want to take up?

MR.SILVERMAN: Yes, your Honor.

One other request I would like to ask of your Honor at this time is that there will be several witnesses who will be testifying for the government under a grant of immunity, and I would like to know the Court's opinion of how you are going to handle it -- do you want the witness to assert his Fifth Amendment privilege, do you want the immunity done in the presence of the jury or without the jury's presence?

THE COURT: Well, I do not usually sit here to answer questions put to me in that way, Mr. Silverman,

mkbr

so let us set the ground rules right now. I rule on disputes.

What is your position?

MR. SILVERMAN: The position of the government, your Honor, is that we would rather have the witness take the stand and testify, and if the witness asserts the privilege to give it at that time.

THE COURT: What is the defense view?

MR. BRILL: I may be in error, your Honor but I fear that that may be prejudicial. I do not think there is a need for that

THE COURT: What is your position?

MR. BRILL: My position is that I would be opposed to that.

THE COURT: What do you think ought to be done?

MR. BRILL: My suggestion, your Honor, is that if the witness is to be granted immunity it should be done in the absence of the jury.

THE COURT: Mr. Rosenthal?

MR. ROSENTHAL: I subscribe to that.

THE COURT: All right, I will rule in favor of the defendants on that.

In any case, where it is expected that a witness will be pleading his privilege and will be testifying under

a grant of immunity, government counsel will make that known to us, and the plea of privilege and the grant of immunity will occur outside the hearing of the jury.

MR. SILVERMAN: Would the Court be opposed to bringing it out on the government's direct questioning, the fact that the witness is testifying under a grant of immunity?

THE COURT: Would there be objection to that, Mr. Brill and Mr. Rosenthal?

MR. BRILL: I think yes, your Honor, there would be. I see no need for that kind of examination, particularly in view of the suggestion which I made to your Honor and which the Court adopted.

THE COURT: Let me be clear on that. If the witness is testifying under a grant of immunity and it is not brought out on direct, do you plan to bring it out on cross?

MR. BRILL: I think I would have to say generally no, I would not, no, your Honor.

THE COURT: Say specifically.

MR. BRILL: Specifically, then I would have to know the name of the witness.

THE COURT: Mr. Rosenthal?

MR. ROSENTHAL: I think it would depend upon the

type of testimony that was developed from the witness, and I could not really represent to the Court what I might do or might not do on cross examination at this stage.

THE COURT: Then it is difficult for me to rule.

I will rule as follows:

In any case of a witness granted immunity where you decide before the conclusion of his testimony that you wish to bring out the immunity, I will allow Mr. Silverman to bring it out on direct, and if you do not so notify him and me I will not allow you to elicit it on cross.

MR. SILVERMAN: Does that also apply to witnesses who testify under compulsion before the grand jury?

THE COURT: Surely.

MR. BRILL: I do not understand that, Judge. We are now talking in terms of a different category of witnesses.

THE COURT: I think I am making this much too complicated. I will change the ruling.

Mr. Silverman may bring it out on direct.

MR.SILVERMAN: Thank you, your Honor.

THE COURT: I think it is much simpler and with less whispering and consultation going on.

I think it is a permissible kind of direct examination -- a question comparable to the eliciting of

prior criminal convictions which, strictly speaking, are cross examination material but which we allow the prosecution to adduce.

What else?

MR. SILVERMAN: Two other matters, your Honor. I served Mr. Brill several weeks ago with a subpoena for certain checks and records in the corporation. The subpoenas were returnable today, and I do not have those records.

MR. BRILL: The subpoena was actually served on me in December, returnable some time in December. I told Mr. Silverman that that technical matter would be of no consequence, that I would inquire and seek to obtain them. We have made a search and we have not been able to find them.

There are some other records, payroll checks that I think Mr. Silverman is talking about. There are other records which were subpoenaed the other day --

MR.SILVERMAN: Yes, but I am not referring to that.

MR.BRILL: I do not think that is what Mr. Silverman is referring to at the moment. But if he is I will say to your Honor that those records are in the vicinity of the courthouse, and as they become required they will, of course,

be produced.

That is certainly with respect to those records for which a subpoena was served on us a couple of days ago and which, for the most part, I think we have.

MR. SILVERMAN: My request was for the subpoena served back in December -- that is what I am referring to at this point.

THE COURT: Mr. Brill represents those materials were looked for -- he did not say by whom -- and they have not been found.

Who looked for them, Mr. Brill?

MR. BRILL: Personnel in the office of the corporation.

THE COURT: Who?

MR. BRILL: Oh, I will get the names, Judge. I do not have them, but I have been advised, and I have no hesitancy in saying this, by Mr. Paterno that they have been looked for. I will get the names of the persons who looked for them, and I have kept Mr. Silverman advised of the progress of our search for the last five or six days.

THE COURT: Well, what do you want me to do?

MR. SILVERMAN: Well, your Honor, if their statement that these records do not exist or do not exist to their satisfaction, to be able to be found, there is nothing more

that the Court can do.

THE COURT: If that is your position it is agreeable to me. Whenever you think the situation is such that I am compelled to do nothing, I am likely to go along with you.

MR. SILVERMAN: If in the future we are required to make that known, we will do that.

THE COURT: Okay.

MR. SILVERMAN: My last observation, your Honor, is in my opening I intend to use a map, an enlarged map. I know that Mr. Brill as a matter of course may object to that type, but I would like to get the Court's approval as to whether or not it is proper to use it in my opening.

MR. BRILL: I haven't heard of this before. I do not know whether or not I would object.

THE COURT: Okay; let us see it. Let us see if you would object, and if you do I will rule.

(Mr. Silverman brings in a map on an easel.)

MR. BRILL: May we come up to look at it?

THE COURT: Yes.

(Counsel examine.)

THE COURT: Do you plan to put that map in evidence, Mr. Silverman?

MR. SILVERMAN: Yes, your Honor.

THE COURT: To show what?

MR. SILVERMAN: Just the locations of the five offices in question -- the locations of the five job sites where these individuals allegedly worked; the offices of Paterno & Sons, Inc., old and new; the bank where the checks were cashed, and the restaurant where the checks were cashed.

THE COURT: All right, is there objection?

MR. BRILL: Yes, your Honor, I would object on behalf of my client.

THE COURT: On what ground?

MR. BRILL: On the ground that this kind of pictorial presentation is not really a visual aid and it does have a tendency to inflame.

I think the subject matter to which Mr. Silverman adverted may be received in evidence as to the locations -- there may not even be an argument about many of them, but I do not think the presentation in such form as this is appropriate. I think it is prejudicial.

THE COURT: Mr. Silverman, what is the relevancy of the geographical location or geographical relationships of these people to the defendants in this case?

MR. SILVERMAN: Well, your Honor, the government is going to prove that the people from these respective --

from their respective offices, in several instances a greater part of the checks were cashed on the same date that the checks were issued, meaning that the checks either had to be picked up and could not be mailed, and other checks several weeks later were cashed after the date of issuance.

One of the things that the government is going to prove is whether or not the checks were mailed or notmailed. That is one area, to show their relationship between their offices and the bank where they went to cash them.

THE COURT: You mean to show they are close together?

MR. SILVERMAN: To show they are not close together. The offices are located in Jamaica, Elmont and Huntington Station, but all the checks were cashed at one bank in the Bronx.

THE COURT: Mr. Brill, you say the facts that Mr. Silverman is forecasting seem to you likely to be allowable if the map --

MR. BRILL: But the inferences which are drawn, and that is what the map reflects.

THE COURT: Can he show that Elmont is X miles from Huntington or whatever?

MR. BRILL: No, I think he can do that.

THE COURT: He could. All right, I will allow

it.

If it turns out, Mr. Silverman, that for reasons I cannot forecast the map is not admissible in evidence, you would face the possibility of a mistrial. So although I think it seems likely to me that it will be admissible, I think I have yo ask you to shoulder responsibility for that possibility.

MR.SILVERMAN: In that case, your Honor, what I would like to do is I would withdraw my request on using the map, and I will save the map for my summation.

THE COURT: I think it might make more sense. Any other preliminaries at this time, gentlemen?

MR. BRILL: We have a couple, your Honor.

THE COURT: Go ahead.

MR. BRILL: Firstly, we have a joint application for enlarging the peremptories.

THE COURT: How many do you want?

MR. BRILL: May we have four more, Judge?

THE COURT: I will give you 12. You may have six rounds of two.

MR. BRILL: Very good.

THE COURT: Use them together.

MR. BRILL: Yes, sir.

THE COURT: And the government will have its usual six rounds of one each.

MR. BRILL: Very good, sir.

The next question or the next matter, your Honor, deals with a request for a representation from the government that it has given us whatever Brady material it believes we should have at this time.

THE COURT: Have you received the affidavit of Mr. Silverman sworn to February 4th?

Did you serve that?

MR. BRILL: Yes, we received it, Judge.

THE COURT: Isn't that such representation? It is; okay.

What else?

MR.BRILL: I am not certain, although I think I did in preliminary conference discuss the matter of electronics surveillance, and I think Mr. Silverman undertook to pursue with the various agencies through the central point of the Department of Justice to see if there were any references or reports of electronic surveillance. That is all.

MR.SILVERMAN: Your Honor, to my knowledge there are no electronic surveillances used by any government agency in any form in this manner involving any of the

defendants.

THE COURT: Anything else, gentlemen?

MR. ROSENTHAL: Your Honor, I have a single additional request to charge.

THE COURT: Give it to the clerk, and hand it to the government.

MR. ROSENTHAL: I will give Mr. Silverman a copy (handing).

THE COURT: Now are we ready for the jury panel?

(Jury panel entered the courtroom.)

THE COURT: Let me address you, ladies and gentlemen who are here for jury service with a two-part apology, to begin with:

A., I apologize for your having been kept standing in the hall; and,

B, I apologize for you being kept waiting an additional time while I practiced penmanship here on some necessary business.

Now with thanks for your patience, let me proceed to the reason for your presence here.

We are going to select from amongst you a jury to find the facts in a criminal case.

I think, as most of you know, in our system of justice a trial is conducted when there are disputes about

facts, about what happened.

In the jury trial, therefore, the jurors are the judges because they decide the only questions for which the trial ultimately is being conducted. When there are not issues of fact we do not have a trial; we decide legal questions through other procedures.

So I remind you of those basic things, in order to set the scene for this business of jury selection, and to recall to you that since those of you who serve on this jury will be the judges, it is necessary that you be qualified as judges are supposed to be in any case -- and specifically it is important that those who comprise the jury be people who have no relationship to anybody involved in the case, who have no knowledge, outside of what the evidence will show about the case, and who have no personal experience or attitudes or relationships of a kind that would make it difficult for them to be neutral and impartial between the two sides.

Very simply stated, those objectives are neutrality and impartiality, are the reasons that underlie the procedure that we follow in jury selection.

To help in that process, and only for that purpose at this time, I will tell you in a very brief and sketchy way the nature of the case and the nature of the partici-

pants. As I say, it is for the purpose of helping you and helping us determine that you can serve in this case, so make sure that there is nothing about the subject matter or the people that might affect your neutrality.

As I say, this is a criminal case. It involves alleged violations of the criminal law relating to the payment and collection of federal income taxes.

There are three defendants, two individuals and a corporation. The individuals are Michael Paterno and George Denti.

The corporation is a company known as Paterno & Sons, Incorporated.

Very briefly described, this indictment contains nine counts or accusations of crime. It charges first that the three defendants -- the two individuals and the corporation -- during a period of years between 1966 and a more recent year, conspired together, made an illegal agreement or had an illegal understanding to evade the payment of federal income taxes lawfully due him owing for the years between 1966 and 1970 from the defendant corporation, Paterno & Sons, Inc.

It is further alleged in other counts that the three defendants filed false and fraudulent income tax returns for the defendant corporation in the years 1967

through 1970.

The defendant Michael Paterno is charged in other counts with signing false returns for the years from 1967 to 1969, and the defendant George Denti finally is charged similarly with filing a false return for the year 1970.

That, as I say, is a very brief description of the indictment, which covers a few pages, and which will be placed in full before those of you who eventually comprise the jury.

As I say, the purpose at this point is simply to acquaint you with the nature of the case and the nature of the participants.

Let me, in connection with the description of the indictment, stress an important point in our legal system, that what I have described as an indictment if, as I said or called it, accusations or allegations. There is, as of now, no evidence that any other defendants before you is guilty of any of these allegations.

On the contrary, all that you have heard so far applies fundamentally to these defendants and to all defendants who come to court on an indictment, are presumed to be innocent, and they will remain protected by that presumption until or unless a jury is unanimously convinced of the guilt of any of them beyond a reasonable doubt.

Let me describe also with as much brevity as I can manage the procedure of jury selection, then we will go forward and conduct that procedure.

In a couple of minutes the clerk of the court, Mr. Swanciger, will ask you all to rise and take your oaths as jurors, promising that when questions are put to you concerning your qualifications to serve in this case you will give full and truthful answers to them.

The purpose is the one I stated that, to give you and the lawyers and me an opportunity to make a judgment whether this is a case in which you can fairly and properly serve.

Then Mr. Swanciger will call the names of 12 of you who will sit in the jury box, and at that point we will have to ask the gentlemen who are seated there now to stand aside briefly while we make more room elsewhere.

After there are 12 people seated in the jury box I will proceed to put certain questions to those people that have been formulated by counsel and me for this businesss of jury selection.

While I am putting the questions, they are addressed to the people who are seated in the box and are designed to elicit information at that point only from the people in the box, but the rest of you, however, who have not initially

been called into the jury box are required to pay attention to the questioning and to make a note in whatever way you make notes, physically or mentally, of any questions which call for some information in your particular case. The reason for that is that in the course of the selection process it will happen that some people who were at first called to the jury box will be excused, and others of you will be called to replace them.

When you are called as replacements I will ask you whether any of the questions already put requires some information from you.

That is the reason I ask you to be sure to record in your mind, or however, any such information while you are sitting back there, and to be ready to give it if and when you come up as a replacement.

Now finally -- and I think almost everybody knows about this but again to mention it here and now, that business of people being excused, I think you all know that in order to give assurance that we have done what is possible to select a jury that will be fair and impartial, fair to both sides, we allow both sides a certain number of so-called challenges -- a certain number that can be exercised without giving any reason at all.

A lawyer or a client just on a hunch may say that

feels that Juror No. so and so in this particular case, or for some reason or no reason had better be excused, and we honor those challenges to the prescribed number.

That, as I say, is to kind of give extra assurance to both sides that we have done what is feasible to select an impartial jury.

So if you should happen to be the subject of such a challenge, if you should be excused, please understand its purpose, in which we all have a stake -- the purpose of a fair and honest jury trial by an impartial jury, and don't regard this as any personal reflection of any kind, because it is not.

Now let me request Mr. Swanciger to take your oath and we will proceed.

(Jury preliminarily sworn.)

(Whereupon, a jury of 12 was preliminarily examined.)

(Whereupon, a jury was duly impanelled and sworn.)

(Whereupon, four alternates were duly impanelled and sworn.)

(Adjourned to 2:30 p.m.)

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AFTERNOON SESSION
2:30 p.m.

(In open court; jury present)

THE COURT: Now, we are about to go on and commence the trial.

Before we do that, let me just say a few words to you, ladies and gentlemen, about your responsibility in this case.

First, under the rules of this Court, whoever sits in the first seat becomes the foreman and so you will be foreman of this jury.

Second, this is repetitious, but this I think is not unimportant. I told you when we met this morning that the task of the jury is to find the facts, to seek the truth about these things that are disputed in a lawsuit.

I want to emphasize to you now that the basis on which you will find the facts is the evidence that is presented in this courtroom.

In our system we have rather particular and somewhat unique rules for presenting evidence. Let me remind you of things you know from the TV and elsewhere. Evidence is sworn testimony. Evidence is exhibits, papers or things that may be introduced into

the record, and it may be supplemented or added to by stipulations, agreements that certain facts are true for purposes of this case.

I mention those things mainly to stress for you at the outset certain things that are not evidence. Now, the things that I say to you are supposed to have a place in this case, but they are not evidence. Similarly, the things that the lawyers say whether to you or to each other or to anybody, have a function, an important function in the case, but those things are not evidence.

We, so far as I know, and in the usual case this is true, we weren't witnesses to any of these things, we have no evidence to give. If a lawyer or a judge has evidence then he takes an oath like any other witness and gets on the witness stand and gives it. Normally we try to avoid that because we want to keep the separate functions separate.

So far as I know, no lawyer will be a witness in the case, and I won't be a witness in the case.

So remember that when we speak it's not with knowledge of any of the facts.

For example, that's important when a lawyer or a judge occasionally asks a question thatmav seem to you to imply some answer. He doesn't know the answer.

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And it's only when you get the answer from a witness that you are obtaining evidence.

If you will keep that in mind it will help us as we go along. A question is asked, and if it sounds like a pregnant question, it suggests something, if there is no answer, you have gotten no evidence as a result of that question.

Now, this evidence in our system will come to you a little bit at a time. It's important during a presentation of evidence you keep an open mind. Don't start deciding the case until the whole case is before you.

Now, in order to help you do that the law requires that you not discuss the case while it's being presented. You won't at any time until after it's over discuss it with people outside the courtroom. Also, don't discuss it with each other until it's all over and it's given to you to decide. The reason for that is the one I gave you. It's to help you keep an open mind. If you start talking about a case, you start having tentative views about it. You start tending to make up your mind. And that's the opposite of keeping an open mind. So don't discuss it while it's in progress.

Now, as soon as I stop, which will be in two or three minutes, the first step in the steps of the trial is the making of opening statements. In a criminal case the burden of proof, as I will be explaining to you more fully later on, is all onthe prosecution, so the prosecution must make an opening statement. And an opening statement is a kind of sketch or outline or forecast of what the evidence will show according to the lawver making that opening statement.

So, it has its place or we would not have that step in the procedure. It will give you a frame of reference in connection with which to listen to the evidence as it's presented. But remember that the attorney making that opening statement is not giving you evidence but simply a prediction or belief about what the evidence will or may show.

Now, the defendants in a criminal case have no burden of proof and they don't have to present evidence, so that the defense attorneys have a choice; they either may make an opening statement or refrain from making one as they choose. If either or both defense attorneys make an opening statement, the things I have just said apply equally. This is an outline or a sketch of what may or may not be proved according to that attornev

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by the evidence. But it's not itself evidence and you will treat it and deal with it accordingly.

I think now we are ready, gentlemen.

Mr. Silverman.

MR. SILVERMAN: Thank you, your Honor.

May it please the Court, Mr. Foreman, ladies and gentlemen of the jury, Mr. Brill and Mr. Rosenthal: My name is Larry Silverman, I am a special attorney with the United States Department of Justice.

I am in charge of the prosecution in this case and the presenting of the evidence to you in this matter. Seated with me at the prosecution table is Mr. Ayres. Mr. Ayers is a special agent, United States Treasury Department.

Simply stated, ladies and gentlemen, this is a criminal tax trial. There are three defendants on trial: Michael Paterno, George Denti, Paterno & Sons, Inc.

There are three separate areas involved in the indictment. First there is a conspiracy, one count in the conspiracy, four counts of tax evasion. The government is claiming that the defense in simple words tried to cheat the government for a certain amount of money. The four last counts are three counts where they charge Michael Paterno with filing a false or phony

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in the amount of approximately $170,000 during a five-year period.

The defendants are charged in this nine-count indictment, as the Court indicated to you and I am sure defense counsel will also, that it's merely an accusation. It's a formal way of bringing this matter into this courtrhouse.

The first count of the indictment, as I stated, is conspiracy. A conspiracy, simply stated, is an agreement between the defendants and others to violate the law, and in this case, in this trial, it's the tax laws. That's what we are concerned with in this particular case.

Now, counts 2, 3, 4 and 5 respectively cover four separate years, each one you should consider separately. Four separate years, each one charges both defendants seated here before you, and the corporation, were tryint to cheat the government out of money that the government claims was due and owing to them.

We will prove that it was a substantial amount of money that was due and owing in each year and that the defendants intentionally and wilfully tried to evade payment of those taxes.

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tax return, and one count in which Mr. Denti is charged with filing a false or phony tax return. As the Court indicated to you the purpose of my opening statement is to tell you what the government intends to prove, what the government will prove. It's a preview of that evidence. The preview is to give you an opportunity to better able follow the facts as they come into evidence in the case.

Ladies and gentlemen, there are two basic types of criminal tax cases. The first case involves a situation where a man earns $50,000 a year and has $10,000 in expenses. But he only includes onhis income tax returns a return of $20,000 in income. Take $20,000 in income and he deducts $10,000 and he pays tax on $10,000.

The other type of criminal tax case is where a man earns 50,000 and he has the same $10,000 in deductions. He states that he has $30,000 in deductions -- excuse me, $40,000 in deductions. In that case, we take the 50,000, we deduct the 40,000, he still pays tax on 10,000.

The type of case that is going to be before you in this trial is of the latter type. The government will prove that the defendants overstated their expenses

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The last four counts of the indictments, 6, 7 and 8 and then 9 -- 6, 7 and 8 charge Michael Paterno with filing a false return in that in that return there were things that he knew to be false but he still signed that return under penalties of perjury as the return will state and filed that return with the Internal Revenue Service.

The last count refers to Mr. Denti for the last year in the indictment in which he filed, the government will prove, a return which he was aware of containing false information.

Now, before I review what the government will prove in the case just let me tell you what the case is not about. This case is not about the collection of taxes. This is a criminal tax trial. This is not a civil case. It's a criminal case.

Now for the substance of the government's case. The government will prove through the testimony of a revenue agent, who is an accountant that works for the Internal Revenue Service, a person who examines both corporate and individual tax returns -- he will testify that during an examination of the books and records of Paterno & Sons, Inc. he, going through the checks -- cancelled checks of the corporation, corporate checks -- that some of these checks on the face of the check had a stamp on it that indicated to him that these checks were cashed, and on the reverse side of the check or the back of the check contained just the endorsement, and that there were no bank account numbers on the reverse side of the check, on the back of the check, no business stamp on the reverse side of the check -- just blank, aside from the signature of the payee; and he will testify that after going through several of these checks he then went from one year to another year to another year -- those are the years we are concerned about -- he started the examination in March of 1965, which is the beginning of their fiscal year, and went for a few months and found one check, went a few months and found another check.

At the end of the whole examination he found approximately 48 checks. These checks were payable to

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5 individuals. Now the names of these individuals are names that you are going to keep hearing in this case: Michael Catenzaro, Anthony Ferrotta, Thomas Tuccella, John Aurrichio and Arthur Lazravitch.

Those are the five people that -- the five names, five payees on those checks that you are going to be hearing about in this trial.

After going through the examination, after removing these checks, he received from Mr. Denti, the defendant -- he received from him invoices which were the substantiation for these checks.

In other words, when a company would get a bill, any company, a bill, they would take that bill, right out a check and make the check in payment of that particular bill.

These were the particular invoices that revenue agent Rizzo was getting to substantiate these payments.

What did he then do? Revenue Agent Rizzo then went to check these addresses out. Two of the addresses were in the Bronx. One address was in Queens; one address in Elmont, on Jericho Turnpike in Long Island; another address in Huntington Station, in Hempstead.

Now there will be no dispute in this case at the addresses of Michael Catenzaro, Anthony Ferrotta and

Thomas Tuccella -- these three addresses were printed on the invoices, that agent Rizzo had, do not exist. Allerton Avenue exists but 1167 Allerton Avenue does not exist.

Halsey Avenue does not exist. There is a Halsey Street in the Bronx. There couldn't be an 1855 Halsey Avenue.

153rd Street in Queens, in Jamaica -- there is no address 89-59 153rd Street.

The agent went to these addresses and found that there was no structure, no particular building, nothing there.

He then went to the other two addresses. In going to these two addresses he found that there was no 800 Jericho Turnpike as printed on the invoice, but there was an 800 East Jericho Turnpike and an 800 West Jericho Turnpike.

He went to those two addresses and found no tenants by the name of John Aurrichio as printed on the invoice.

He then went to the last address, 479 Hempstead Turnpike, which is in Elmont, and there is such an address but found no tenant by that name at that address.

The government will produce the mailmen for the last two addresses, and they will testify before you that as long as they have been delivering the mail -- it covers the whole period of time -- there was never any tenant by

those names at any of those addresses.

Now printed on the same invoices, ladies and gentlemen, there are telephone numbers -- telephone numbers are supposed to be for business people who did business with Paterno & Sons, Inc.

There will be no dispute that two of the telephone numbers listed on these invoices have been subscribed to by other people completely unrelated to this case for over ten years.

Three ofthe other telephone numbers, the remaining three, were either subscribed to by other people during that period, or unsubscribed to.

How does the government intend to prove that somebody did not exist?

Well, there are two types of evidence that come in during a trial. There is direct evidence, that you see and hear, and circumstantial evidence where you get certain facts, and based upon your own knowledge and experience you draw a conclusion or draw an inference from it.

The government intends for you to look at the evidence that it presents, and at the end of the trial the Judge will tell you that circumstantial evidence, if you believe it, carries the same weight as direct evidence.

Practically all of the evidence that will be pre-

sented by the government will be circumstantial evidence. There is no way for the government of proving that these people did not exist. They never existed, to bring in somebody and say "I can definitely swear they never existed." This would be circumstantial. People like the mailmen, people like the telephone company. But that is an added burden that we have. So what will we be doing? We will produce somebody from the Internal Revenue Service -- and that man from the Internal Revenue Service will testify that they made an examination of the districts involved in this case -- the company areas, the geographic areas, and there was no notice filed by any of the five truckers, except one man: John Aurrichio who lives out in Dix Hills.

Incidentally, John Aurrichio is in the trucking business, some form of trucking business. Incidentally, John Aurrichio worked for Paterno & Sons, Inc. way back when they were building the World's Fair in 1965, and he will appear and testify that he is not the John Aurrichio named on it, that he never worked for Paterno & Sons, Inc. after March of 1965.

We will also produce someone from New York State to testify to the same thing. They examined their records and they could find no record of any one of these names at any of these addresses.

We will bring in somebody from the Motor Vehicle Department -- a person from the Motor Vehicle Department who will testify there is no record of chauffeurs' or operators' licenses for any of these five individuals.

Now the people in this case were apparently truckers, people who did trucking business with Paterno & Sons, Inc., and the invoices show that on various dates they supplied more than one truck. We will bring in somebody from the Workmen's Compensation Rating Board -- a board that is licensed by the Superintendent of Insurance of New York State, and they were required to keep a file on all contracts -- all contracts of insurance by all people who have an employee -- one employee must have Workmen's Compensation insurance and they must file their insurance policy with this board, and that board determines the rates of Workmen's Compensation insurance.

He will testify that he searched their files and after searching the files he found no record of any one of these five names that they found in his files, as required -- the insurance policy of Paterno & Sons, Inc., Workmen's Compensation policy that they had to cover their employees.

We will also bring in the union representatives -- people who represent the Teamsters, who these truck drivers -- all truck drivers are union members in this geographic

area -- they have the same numbers -- the island, Westchester County and upstate counties belong to these two locals, and they will testify that they made a search of their records and found no employer of either one, by the name of these five individuals except in the one case, John Aurrichio who is in the trucking business.

They will testify that they searched their records and they did find contracts for Paterno & Sons, Inc.

So they did have a trucker working in this geographic area who joined the union.

Now involved in this case are some 48 checks. They are the checks that are the whole basis of this case. These are the checks that were the payments made to these five truckers.

Now an examination of the checks will show you that almost all of the checks, excluding the nine, were all cashed at the bank.

These checks were not deposited to business accounts. These checks were all cashed at the Royal National Bank in the Bronx.

Now this is the same bank where Paterno & Sons, Inc. had their checking account. This is where the corporate depositors kept their account,and we will produce three bank officers, all of whom took part in the cashing

of these checks. They will testify to their initials on the checks. They will testify they cashed these checks. They will also testify that in the usual case when somebody came in to cash a check they required identification. You will see that most of these checks are not $5 or $10 checks. These checks are all in excess of $1500 up to $9,000. These checks required some sort of corroboration.

They will testify that the defendant, George Denti, in these cases, called them up prior to the payees coming into the bank, in some cases, and told them that he was sending in a check payable to the names of the people on these checks, and gave them the amount of the checks, and these payees -- these people came into the bank. That they then cashed these checks, the four people who presented checks. They will not be able to identify these people. They don't remember what they looked like but they do remember the conversation with Mr. Denti. They do remember that -- they recognize their initials on the checks, and they remember the circumstances of the checks because they will testify, ladies and gentlemen, that in no other instances did they approve the cashing of any checks of Paterno & Sons, Inc. other than these checks.

Now the other nine checks, which are also made

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out to these payees, these five individuals that I have already named to you -- these nine checks were all cashed at a bar and restaurant in Manhattan -- I think the bar is Vin Rao's Bar & Grill. Mr. Rao will testify that he cashed all these checks, but he, too, does not remember who he cashed them for, but he recognizes the signature on the checks, and he recognizes his stamp mark of his bar and grill on the back of the checks.

These are the only checks out of all the ones in question that have any sort of endorsement -- any kind of number other than the payee whose name is on the check, on the reverse side.

So we have the name John Aurrichio, and underneath that you have Vin Rao, with a stamp on it.

Now three of the payees -- three of the alleged truckers cashed their checks at this particular bar and grill. The three payees who cashed their checks are Catenzaro, Ferrotta and Tuccella -- two people who live in the Bronx, and one person who was in Queens -- on 9 separate occasions. These three alleged truckers went to this bar and grill in Manhattan and cashed those checks.

One question, ladies and gentlemen, that you will have to resolve is: Did these people exist? How did they get their checks? They either could have gotten

them in one of three ways: If they were mailed, they were picked up at the office of Paterno & Sons, Inc., or that they were brought to these people somewhere either on the job site or wherever they were.

You will notice, ladies and gentlemen, it will be brought to your attention, that 14 other checks were cashed on the day that the checks were made out.

By that I mean on the face of the check there is a name of the payee and there a date.

Let us say the date was December 1st. Well, the cash mark on the front of the check also has the same person who cashed these 14 checks, or cashed on the same day or the day after.

Now a group of other checks, on three occasions, two of the same checks which were dated the same day by two different payees, were cashed at the Royal Bank, and on one occasion three checks made out to three separate payees were all cashed at the bank on the same day.

The government will also call several truckers who actually did work for Paterno & Sons, Inc. These truckers allegedly hired the real truckers -- La Spina and another was Minichino, and a few others. These truckers also hired additional truckers.

They will testify that they hired other truckers

where they themselves couldn't supply the number of dump trucks that Paterno & Sons needed on a particular day.

They will testify that they never saw any trucks with these individuals' names on them; that they never ordered any trucks for Paterno & Sons, Inc. other than the ones that they will testify to.

They will also explain the system, the accounting system in the trucking business.

The accounting business in the trucking business is really a very simple one. It is like a receipt delivery system. Each trucking company has more than one driver, and the owner of the company cannot drive all the trucks so he has different people that he gets from the union to drive these trucks, and he gives them a delivery ticket receipt.

Each receipt has an original, a carbon and a copy.

The driver of that truck keeps that receipt with him all day long. At the end of the day, after he is finished working at a particular job site, he gets someone from that company who he is doing the work for -- the contractor. He gets him to sign the original. He keeps the original and the copy goes to the person he did the work for. He then takes that original and he gives it to the trucker, the person who owns the trucking business.

At the end of the month the trucker gathers up all the delivery tickets that he has from a particular file, adds them up, writes out a bill or an invoice, and takes that invoice and sends it into the company that he worked for.

In this case that was Paterno & Sons, Inc..

Then in turn they would go to their file, count the delivery tickets up and match them to the invoice to see if they are being charged the right amount. They will explain that system and how each one works -- although for each company they have a different type of delivery ticket -- this was the system that they used. They will tell you that they got paid from Paterno & Sons, Inc. -- they got paid by check. They received a checkmost of the time in the mail, and a few times when they were pressed for cash they even went down there and picked up the check themselves. They took their checks and deposited their checks to their bank account. None of them cashed any checks in the Royal National Bank, the Paterno & Sons' bank. They deposited it in the wrong account, and then they disbursed their expenses from their own checking account.

Now two of the truckers will testify that they worked on a job site called Carmel, New York. I do not know if you ladies and gentlemen know where Carmel, New York

is. It is several miles above the city line. It is above Westchester, a little higher up.

Now they will testify when they worked at Carmel, New York they weren't being paid for their time back and forth from their offices which were in Westchester, so instead of having to pay their truckers for an 8-hour day and then after that overtime, if they worked overtime, they had to pay them to drive these big,huge trucks 30 or 40 miles up to Carmel --

MR. BRILL: Your Honor, I am reluctant to interrupt but I do not think this is an appropriate opening.

THE COURT: On what ground?

MR. BRILL: On the ground that what the so-called independent truckers did with respect to persons with whom they had other relationships other than the defendants here would not be binding on the defendants here.

MR. SILVERMAN: These truckers are testifying as to their arrangements with Paterno & Sons, Inc. at that particular job site.

MR. BRILL: I do not understand that.

THE COURT: Okay.

MR. SILVERMAN: As Mr. Brill pointed out, on the Carmel job site, that covered the site that Paterno &

Sons was working on, and they will testify that they left their trucks at the job site, and when they left at the end of each day -- when they arrived each morning they never saw any other trucks working at that job site.

Now on the invoices from the companies, two of the companies who allegedly worked for Paterno & Sons, Inc. up in Carmel, New York, they had their offices on Long Island -- one in Elmont and one in Huntington Station.

The government will prove not only that these truckers did not exist but that these trucks -- that it was impossible for these truckers to work at the places that the invoices claimed they did work.

I will give you a for instance. On one of the invoices it says that on a 3-day period, the truckers worked at a particular job site, and the days are listed there.

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Well, Paterno & Sons, the government will show, had to submit certified payrolls to the municipality who they were working for. These payrolls listed the employees who were working at a particular job on a particular day. It shows the day of the week, it shows the month and it shows the designation of the employee and the employee's name, and how much the employee was making that particular week.

The resident engineer who was hired by the municipality to supervise the job, to make sure that Paterno & Sons was complying with their contract with the municipality, his records show that on these particular days there was no one working because of heavy rains and freezing conditions, and he will testify to that.

Now, his records are corroborated by Paterno & Sons' own records, as you will see, that shows who was working on that particular day.

Now, on the second job site the invoices will show that two of the alleged truckers on two days were working. Now, the superintendent's reports, an employee of Paterno & Sons, Inc., will show that on those particular days, there was no work being done, aside from survey work by a few of the supervisory personnel. The inspector from the City of New York will testify that

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his records show that on those particular days there was survey work being done, and there was no trucking work.

Now, on the same job site, ladies and gentlemen, approximately one year later, during a five-day period, two truckers claim to be working on a particular job site.

Ladies and gentlemen, we will prove to you that during that period there was 20 inches of snow on the ground and that there was no work being performed, and this will be corroborated by the records of Paterno & Sons, Inc. and the records of the city inspector who was working on that particular location.

Although the invoices say that two truckers were working there hauling fill during that particular time, theinspector's report and the foreman's report, or the superintendant's report of Paterno & Sons, Inc. will indicate that during that five-day period when the truckers allegedly worked that particular place there was 20 inches of snow.

Now, the government will also show that during a two-month period of time, as a last example that I'd like to give you -- during a two-month period of time, the invoices that the government was given by Mr. Denti list a certain number of trucks being used during

that two-month period at a particular job site.

Ladies and gentlemen, the superintendent's reports when handed up, and the City of New York's reports when added up as to the number of trucks at the particular site on the particular day are in exact agreement. There is no discrepancy. But when you add up the invoices of the number of trucks being used by these alleged truckers during the same period of time, it is far in excess to the amount of trucks that they say were actually used.

Now, the government will call as witnesses several present employees, several past employees of Paterno & Sons, Inc. They will testify as to Mr. Paterno's and Mr. Denti's work in the office, how the bills were paid, how the bills were prepared, what system they used for the payments of their expenses. Based upon that, ladies and gentlemen, you will then draw your conclusions as to what happened at that particular time period at that particular office.

Now, in addition, ladies and gentlemen, we will produce an expert, a handwriting expert, and the handwriting expert will testify that of the checks in question that were made out to John Aurrichio, Arthur Lazravitch, Thomas Tuccella, Martin Catenzaro and Anthony

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Ferrotta that five of the chesks, the endorsements of five of the checks, payable to three different payees, were signed by George Denti.

This expert will also testify to a typewriting analysis he performed. As you will see, all the invoices were typewritten. He will testify that two of the different companies, their invoices, were typed on the same typewriter, two separate payees, two separate addresses were both typed on the same typewriter.

Now, that is what the government intends to prove, ladies and gentlemen. There is no question, or there will be noquestion that the returns were filed. There will be no question as to the income reported. The government is not disputing that. It is not contending that the amount of money that they reported on their tax returns is in any way improper. The government will not prove what happened to this money. The government does not know what happened to this money, it will not produce any witnesses to tell you what happened to this money.

The question is concerning solely the deductions, the expenses that were listed on these tax returns. The question is were these truckers in existence? Did they ever exist and did George Denti and Michael Paterno

know that these truckers did not exist. That is the whole basis of this case.

The government is convinced, ladies and gentlemen, that after you hear all the evidence in the case you will be persuaded, you will be convinced beyond a reasonable doubt of all the charges in the indictment.

Thank you.

MR. BRILL: With your Honor's permission.

Mr. Soto, ladies and gentlemen of the jury, members of the prosecution staff, Mr. Rosenthal: I listened with a great deal of interest to the scenario as it was spun by Mr. Silverman in his very able and effective manner, and it made me feel more grateful for our jury system.

What Mr. Silverman has told you is not evidence as his Honor has already indicated, as I am sure he will in the course of his later instructions tell you, as he will about myself and Mr. Rosenthal that what we say is not evidence.

The burden which rests upon the government -- and I don't propose to invade the Court's province, but with your Honor's indulgence, I would like to make a few short references -- is one -- that burdenis one which is a heavy burden, and it's a heavy burden under our

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system of criminal jurisprudence in order to insure that the requirements of law are met, that the proof is established to the satisfaction of each one of you ladies and gentlemen who sits as a judge of the facts, beyond a reasonable doubt, based upon all the evidence that is offered in the case in support of the charges as well as theevidence which the prosecution fails and the gaps which are created by that failure of evidence in connection with the presentation of its case.

The indictment, notwithstanding what has been said to you and without becoming technical about it, because here again is a matter for the Court, charges in these nine separate counts are essentially the same transactions arising out of the same returns for the same years that are alleged to have been the years in which the corporation's income tax return falsely deducted expenses to the knowledge and with the criminal intent of the parties concerned.

I represent Michael Paterno and the corporation Paterno & Sons Incorporated. I speak for no one else. I don't have the authority to. But I speak as vigorously as I can on behalf of my clients.

In examining the evidence which will be presented to you both on direct and cross-examination,

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you will find that the picture is not all together -- in fact,it may be very different from the kind of picture presented to you in the opening statement of what the government expects to prove -- the prosecution would have you believe that this case is all about five truckers who are non-existent, who cashed their checks at banks and that they will establish by various methods which have been indicated to you in Mr. Silverman's opening that these truckers didn't occupy the locations which the invoices reflect were occupied by them, that they cashed their checks or some of them in different places, including the bank, as though that in and of itself constituted the crimes which are charged in this indictment.

Nothing could be further from the truth. The indictment deals with the corporate tax returns for the fiscal periods which ended as set forth in the indictment, except for the first count, February 28, 1967; February 29, Leap Year, 1968; February 28, 1969; and February 28, 1970.

And in four of the counts to which reference has been made, counts 2 through 5, the charge is made that for each of those respective or specific fiscal years of the corporate defendant, Paterno & Sons Incorporated,

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there was deducted an amount which is said to be a false amount, and as a result of the deduction in each of those two years, there is said to have been an unlawful or a fraudulent tax return filed.

The next series of counts deals with exactly the same subject matter as the proof will show. It deals with the same truckers, the same invoices, the same checks, but they set up four separate crimes under the statute because the same returns which are said to be false returns are false in respect of the deductions which are specifically set forth, true, under another section of the Internal Revenue Code.

The first count charges a conspiracy to violate. The first series of counts, really, the filing of a false and fraudulent return for each of the years, and it adds the return for the preceding fiscal year which ended on February 28, 1966.

Now, I don't propose to take all of the time which has been spent in outlining to you what the evidence will show. I do propose, however, to add my voice to the instruction -- not by way of instruction but as a request, a prayerful request -- that you keep your minds open until you have heard all the evidence in the case and have received the instructions which the Court

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will give applicable to the evidence in the case, keeping in mind what really is the evidence as each one ofyou hears it, considers it,without exchanging your views as you have no right to do until you enter upon your deliberations and then, and only then, when you exchange your views, and you advance to each other the reasons why you believe that the evidence supports or does not support the charge, you express them, and if there are differences among you, if you can compose those differences, then I think it to be your duty to compose them, but if you honestly and conscientiously have a different point of view from one of your fellows on the jury, a co-juror, who honestly has his or her own point of view, you are under no compulsion to surrender what is your honest judgment merely to become a member of another club. That's what it can be said to amount to.

In respect of each of the counts which charges a crime -- and remember, as his Honor has already told you, these are merely accusations; the indictment is only the formal way in which a case is brought into court, it bears only a label of United States against the named defendants, Michael Paterno, George Denti and Paterno & Sons, Inc. -- it means nothing in the way of evidence, it's only to enable you to have before you the

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nature of the charges so that in consideration of the evidence you can make the decision as to whether or not there is a reason for doubt based upon all the evidence in the case.

The law I think, and of course again with your Honor's permission -- I acknowledge this to be an invasion of the Court's province, but I think I am duty bound to say that among the other facts that you will be required to find, you will be required to find that Michael Paterno knewthat there were in fact non-existent truckers, that he deliberately, intentionally, with a criminal purpose in his mind set about to effect a fraud on the revenue statutes of this country,and with that knowledge and that intent, he then proceeded to sign the returns which bear his name. There is no question about the fact that the returns which will be offered here will be consented to being received in evidence.

There is no question about the fact that Michael Paterno as the president of the company signed the returns which bear his signature. There will be no question about that, as it has been indicated that there is no question at all that every single penny that came in to Paterno & Sons, in the corporate treasury was in

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fact reflected as income by the corporation.

The dispute is whether with knowledge and with intent theer was a scheme which you are called upon to guess about because of these non-existent, to borrow a phrase which you will hear often in the course of this trial, truckers, that yo may infer, speculate, guess, because thats all it comes down to, that Michael Paterno did this with a criminal intent knowing that it was the wrong thing to do.

I suggest to you that the proof will not support that. The proof will show that in accordance with thewell established practice of paving their bills when Paterno & Sons was in a position to pay its bills, after receipt from those agencies for which it did the very arduous, careful and excellent work which it did perform as contractor, it did pay its bills. The mere fact that coincidences with respect to the dates on which those bills were paid essentially is of no true significance.

What is important is, where they paid, was the work done, did Paterno, Michael Paterno believe the work was done, did he sign the checks which you will see in evidence and about which there will be no question raised that he actually signed thos e checks in payment

for those invoices; did he sign them believing that those persons who were the named payees were entitled to be paid? These are the judgments which you as the judges of the facts in this case will be called upon to make.

I am satisfied that under your oaths as jurors using the experience which each one ofyou has had in the course of your respective lives,and the good common sense with which God gifts all of us, that you will reach the only conclusion possible in this case, that Michael Paterno is not guilty of any of the crimes which are charged against him in this case.

Thank you.

MR. ROSENTHAL: May it please the Court, Mr. Silverman, Mr. Brill, Mr. Foreman, and ladies and gentlemen of the jury:

I represent the defendant George Denti, and as Mr. Brill said to you, in his opening statement, that is the only one I represent. He in turn represents Michael Paterno or Michael Paterno and the corporation.

Some ofyou who are sitting for the first time might wonder at the order in which the addresses have been made to you. You will note that Mr. Silverman made the opening address and his Honor told you that thelaw imposed

that burden upon him as the United States Attorney, that it was his duty to outline to all of you, to the Court, and to the defendants and their lawyers, what the government intends to prove. And he goes first because of the fact that the burden of proof is upon the government.

Now, many times in criminal cases the defense counsel sits back and says, "I waive my opening," or "I will waive my right to the opening" because the defendant need prove nothing, he need say nothing, his lawyer might sit back and not even cross-examine a witness, because the burden is, as you will hear throughout the trial, the burden is upon the government.

Now, there will be cross-examination, I am certain, by both Mr. Brill and myself of some witnesses called by the government. And in many instances that cross-examination will develop matters that are pertinent to the defense and that will demonstrate to each of you what the picture is all about.

You will note, and you will learn during the course of this trial, that the defendant George Denti has no financial interest in Paterno & Son, that the defendant George Denti is an employee and a nominal officer, and you will learn through the examination of

witnesses, both government and defense witnesses, that there would be no reason for the defendant George Denti to assist in the falsification of any income tax return, and no reason for him personally to do anything as described by the government.

I am not going to be as long as Mr. Brill was for the simple reason thatMr. Brill outlined many of the things that I normally would say in the course of an opening.

There is one thing that worries me and I think worries almost every defense counsel particularly in a case that is going to run two or three weeks as has been prognositcated. When the government has finished its proof and if the defendants' defense is going to offer any proof, usually ten days or two weeks of trial have gone by and by now everyone is getting restless, including the jury, the Court and counsel, and the tendency then is hurry up, let's rush, let's get it over with.

I am going to ask each and every one of you to be as patient as it is humanly possible to be and to follow the instructions that his Honor gave you at the very outset and that he will undoubtedly repeat during the trial. Do not make up your minds until you have heard the very last word which will come from the Court in the

charge that the Court will give you. And until you actually retire and deliberate and discuss among yourselves what has been proved or what has not been proved. And bear in mind as you are listening to the testimony, and as you see the physical exhibits that go into evidence, that in our system of jurisprudence, no defendant need prove his innocence, and we are not going to attempt in our proof in this case to prove innocence, because that is not our burden. The burden is the government must prove guilt and failing that, the verdict of the jury must be not guilty.

It is not a question of innocent or guilty, it's a question of either guilt has been proven or guilt has not been proven, and we will demonstrate, and we will show you through the witnesses that will be called by the government and by the defense that the defendant George Denti is in fact not guilty, that in fact the government will not prove and will not be able to prove to the satisfaction of each and every one of you the burden that they have, that the defendant George Denti is beyond a reasonable doubt guilty.

And once we do that, we will expect that you will perform your sworn duty and that you will return a proper verdict in respect to each of the counts in which

George Denti is named. He is named in the first count, he is named in the next four counts, and he is named in the last count. The next four counts or next three counts. And he is named in the last count.

And the only reason why he is named in the last count is that particular year, that tax year, he as a ministerial officer of the corporation, signed a return. And I ask you, as I did at the beginning, and I will repeat, and I probably will repeat in summation, I ask you to listen attentively, I ask you to listen to the evidence, examine the exhibits, listen to the cross-examination because that may develop things that you did not learn on direct examination, and make up your mind from the evidence and the testimony that will be proved here, and deliberate among yourselves and if you do that you will be giving my client the type of trial to which he is entitled and that's all he can ask for at your hands, and if you do that, you will come to the conclusion that the government has failed to establish its burden of proof.

Thank you.

THE COURT: I think what we will do is take a ten-minute recess before we begin to hear the evidence. The way the selection worked out Mr. Swanciger has not

had an opportunity to take you to the jury room which is where you will convene ordinarily, ladies and gentlemen, and where you will stay during the recess and where you will deliberate.

So let me ask that you retire now for about ten minutes and then we will begin the evidence.

(Jury in the borx.)

R O B E R T W H I T N E Y, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Whitney, can I please request that you keep your voice up so that the last juror sitting over here and those at defense counselcan hear you?

A Yes.

Q What is your full name?

A Robert E. Whitney.

Q By whom are you employed?

A Internal Revenue Service.

Q How long have you been employed by the Internal Revenue Service?

A Three years.

Q What is your position in the Service?

A Supervisor of Special Search.

Q What are the responsibilities of a supervisor of Special Search?

A We locate returns that cannot be located by normal means, charge-outs, and so forth and so on.

Q Where are you presently assigned, sir?

A The Brookhaven Service Center at Holtsville, New York.

Q What counties does the Brookhaven Service Center cover?

A Districts 11, 13 and 22.

Q What is District 11?

A Brooklyn, Long Island and Queens.

Q What is District 13?

A Manhattan, Staten Island, Westchester, Yonkers, Bronx and certain upstate counties.

Q And what is District 22?

A New Jersey.

Q Now what types of returns are filed at the Brookhave Service Center?

A Corporate and individual.

Q How many different types of individual returns are there?

A One -- 1040, basically.

Q Are there more than one type of corporate returns?

A Yes.

Q What are the different types, sir?

A Well, there is 940's; 941 which are filed on a quarterly basis, and 1020's which are filed on the main or fiscal year ending.

Q What are 940's?

A 940's are another tax return.

Q And what are 1120's?

A 1120's are the yearly returns showing gross receipts, gross profits, total tax due, and so forth.

Q Is there a form of return called 2290?

A Yes.

Q What type of returns is that?

A Highway use tax.

Q What is a highway use tax return? What is that based on?

A That is based on the number of axles on a truck. They have to pay a truck for the use of the highways.

Q Did you cause an examination to be made of the records at the Brookhave Service Center to determine whether or not Paterno & Sons, Inc.filed tax returns?

A Yes.

Q And, Mr. Whitney, I would like to show you Government's Exhibits 50, 51, 52, 53, 54 for identification, and I ask you if you recognize those returns (handing).

MR. BRILL: If these are the returns of Paterno & Sons, Inc. for the years in question in this indictment, we consent to their reception in evidence.

MR. SILVERMAN: Let the record indicate that

these are the returns for the fiscal years ending February 28, 1966.

MR. BRILL: What is that exhibit number?

MR. SILVERMAN: That is Exhibit No. 50.

No. 51 is February 28, 1967.

No. 52 is February 29, 1968.

No. 53 is February 28, 1969 and No. 54 is February 28, 1970.

I offer them in evidence.

THE COURT: They are received, as I understand, without objection; is that correct?

MR. BRILL: That is correct.

MR.ROSENTHAL: Yes, your Honor.

(Government's Exhibits 50, 51, 52, 53 and 54 were received in evidence.)

BY MR. SILVERMAN:

Q Mr. Whitney, does the Internal Revenue Service -- do they maintain a record of the amount of moneys received from each individual, for each corporate taxpayer?

A Yes.

Q What type of documents are these recorded on? How are they recorded?

A Account ledger cards. They are basically handled by the accounting department -- account ledger

cards. They are transferred to microfilm, debit payments, credit payments, and so forth.

Q Mr. Whitney, I show you Government's Exhibits 55 through 60 for identification, and I ask you if you recognize these exhibits (handing)?

A Yes.

Q Mr. Whitney, what are those exhibits?

A Certificate of assessments and payments.

Q And what are certificates of assessments and payments?

A Transcript of a certain taxpayer's account.

Q What information is contained on the certificate of assessments and payments?

A The name of the taxpayer, address; social security number or employee identification number; the date and the explanation of the transactions.

Q Mr. Whitney, for what particular taxpayer does 55 through 60 relate to?

A (After examining) Paterno & Sons, Inc.

Q And for what particular years are these transcripts of the accounts of the moneys received by the Internal Revenue Service, Treasury Department?

A '65 through '70.

MR. SILVERMAN: Your Honor, this time we would like

to offer in evidence the transcripts of Counts of Paterno & Sons, Inc. for the years 1965 through 1970 (handing).

MR. BRILL: I think, your Honor, at first glance this calls for a side bar discussion.

THE COURT: Come ahead.

(At the side bar:)

MR. BRILL: I am looking at Exhibit 35 for identification, your Honor, the very first sheet, the certification contains items which are not within the scope of the issues of this case.

For example, there is a reference to a negligence penalty. There is a reference to a deficiency assessment by generated interest assessment of additional tax -- a deficiency.

These are matters not in issue in this case.

MR.SILVERMAN: Your Honor, the government would like to offer into evidence only the sections of these transcripts that refer to the date and the amount of the payments, and would exclude any information relating to the source or the description of the payment.

THE COURT: Would it accomplish your purpose to read in the date and the amount, without putting the papers in themselves?

MR. SILVERMAN: It would not, your Honor, since these

are -- it would take quite some time to do that, if the Court would prefer that.

THE COURT: How many dates and amounts of payment are there?

MR. BRILL: On Exhibit 55, for example, it seems to me it comes with ill will for me to object to the first three items -- the return filed, with tax liability, remittance with return, and dates and amounts.

THE COURT: I am not interested in what you are not objecting to.

MR. BRILL: I am not objecting to that but I object to what follows.

THE COURT: How do we handle, Mr. Silverman, those portions that you are not relying on? Can they be blocked out?

MR. SILVERMAN: Absolutely. If Mr. Brill has no objection to so defacing this particular document that was prepared, have no objection to blocking out this particular column on all the papers.

THE COURT: Why don't we agree that it will be received, subject to its being blocked out, by agreement between counsel overnight, and if you have any dispute on it I will take it up in the morning, and that will be done before it is turned over to the jury.

MR. BRILL: Could I return to your Honor's original suggestion? I think he can read those that apply to this case.

THE COURT: No, I think Mr. Silverman has the right to have the physical parts in evidence.

MR. BRILL: Except the blocking out -- unless they are given appropriate instructions it does not mean anything, because it is not within the issues of the case.

THE COURT: If that is agreeable to you, Mr. Rosenthal.

MR. ROSENTHAL: That is agreeable.

MR. BRILL: Thank you.

(In open court:)

(Government's Exhibit 55 through 60 now received in evidence.)

THE COURT: Let me just say, ladies and gentlemen, that on those documents that have just been received there are some portions that counsel agree are not relevant to this case. There are some portions that are relevant. The way to handle that physically is that we will block out or cover over anything that isirrelevant, so that you are not diverted or bothered with things that are of no consequence to this case; and they will be in that shape

when and if those papers are given to you, as they may be when you deliberate.

Okay.

BY MR.SILVERMAN:

Q Mr. Whitney, do you know what a 1040 return is?

A Yes, an individual.

Q Does the Internal Revenue Service maintain a record of all 1040 returns filed at the Brookhaven Service Center for the districts you previously mentioned?

A Yes, sir.

Q Did you cause a search to be made of the records of the Internal Revenue Service to determine during the years 1965 through 1970 whether certain named individuals had filed tax returns with the Internal Revenue Service?

A Yes.

Q And what names did you cause a search to be made on?

MR. BRILL: If your Honor please, I want to object to that. I do not think that is material or binding on Michael Paterno or Paterno & Sons, Inc. He is now talking about the individual returns of persons -- I take it other than officers of Paterno & Sons, Inc. or Michael Paterno.

THE COURT: I take it he is going to be referring

to the five names that he says he is going to be focusing on in this case -- yes?

MR. SILVERMAN: Yes.

MR. BRILL: If so, I am objecting to that.

THE COURT: That is overruled.

MR. ROSENTHAL: Your Honor, I should have done this earlier -- made it appear on the record that objection by either counsel will redound to the benefit of the other unless he specifically says that he does not wish to join in the objection.

THE COURT: Yes.

MR. ROSENTHAL: Thank you.

BY MR. SILVERMAN:

Q Mr. Whitney, what were the names of these individuals that you made a search for?

A Anthony Ferrotta, Thomas Tuccella, Arthur Lazravitch, John Aurrichio and Michael Catenzaro.

Q Mr. Whitney, I show you these four documents marked for identification as Government's Exhibits 62, 63, 64 and 65, and I ask you, sir, if you recognize those exhibits (handing).

A (After examining) Yes.

Q What type of documents are they, sir?

A Certificate of assessments and payments.

Q Are they the same type of certificates of assessments and payments that were previously received in evidence?

A Yes.

Q And for what type of forms was the search made for those documents?

A Any type of form that they filed.

Q And what type of form is located in the upper corner of that document?

A There is no record of filing for any of them.

MR. BRILL: I object to that, if your Honor please, and I move to strike it out as not binding on Mr. Paterno or the corporate defendant.

THE COURT: That is overruled.

MR. BRILL: I respectfully except.

Q What are the names of the four individuals on those four documents, sir?

A Michael Catenzaro, Anthony Ferrotta, Arthur Lazravitch and Thomas Tuccella.

MR. SILVERMAN: The government offers Government's Exhibits 62, 63, 64 and 65 into evidence (handing).

MR. BRILL: Would your Honor prefer that we reserve the cross questions with respect to those documents? I think frankly they should be reserved.

THE COURT: All right.

Is there any objection to their being received at this point?

MR. BRILL: I will say, your Honor, that we have -- that we reserve our motion to strike, subject to connection.

THE COURT: They will be received on that basis.

MR. BRILL: Very good, sir.

(Government's Exhibits 62, 63, 64 and 65 were received in evidence.)

BY MR. SILVERMAN:

Q Mr. Whitney, you stated that you made a search for an individual also by the name of John Aurrichio?

A Yes.

Q You have in front of you Government's Exhibit No. 61. I ask you what type of document that is.

A (After examining) Certificate of assessments and payments for John Aurrichio.

Q What is the name of the taxpayer on that certificate of assessments?

A John and Katherine Aurrichio.

Q What is the address?

A 25 Buckingham Drive, Dix Hills, New York.

Q What are the years on those certificates of assessments?

A 1967 through 1973.

MR. SILVERMAN: The government offers into evidence Government's Exhibit 61 for identification (handing).

MR. ROSENTHAL: We object to this, if the Court please, on the ground that there is no proof that it is connected with any of the issues involved in this case.

Unless your Honor wants further objection on the record, I will go further at the side bar.

THE COURT: No, I do not want further objection.

I will receive it subject to connection, subject to motion to strike.

(Government's Exhibit 61 was received in evidence.)

BY MR. SILVERMAN:

Q Mr. Whitney, you previously described what a 2290 return is.

Will you please capsulize it for us again?

A It is a highway use tax that is governed by the amount of axles on the truck.

MR. BRILL: I am sorry, I did not hear that.

(Answer read by the reporter.)

Q Mr. Whitney, did you cause a search to be made to determine whether or not any of those five individuals

had filed 2290's?

A Yes.

Q What are the government's exhibits that are in front of you, covering Nos. 66 through 70?

A Right.

Q What particular years do they refer to, sir?

A No particular year.

Q Well, what are the years?

A (After examining) Exhibit No. 67, 6507 through 7006.

Q What does that mean in our terms, sir, numbers?

A 7th month fo 1965 through the 6th month of 1970.

Q And what taxpayer does that refer to?

A Michael Catenzaro.

Q What is the return of the record on that particular document, sir?

A No record of filing a form 2290 during that period.

MR. BRILL: The same objection, your Honor, on the same ground.

THE COURT: All right, the same ruling.

MR. BRILL: Thank you.

Q Now the following documents are for which individual, sir?

A Anthony Ferrotta.

Q Go through each one of the documents and give the name of the taxpayer on those documents.

MR. BRILL: And the exhibit number, please, so that we can keep track of it.

A No. 67 is Michael Catenzaro.

No. 68 is Anthony Ferrotta. These are all Form 2290's, for the years 6507 through 7006, Form 2290's.

The next exhibit number, 69, is Arthur Lazravitch.

Exhibit No. 70 is Thomas Tuccella, and Exhibit --

THE COURT: Thomas who?

THE WITNESS: Tuccella.

THE COURT: How do you spell that?

THE WITNESS: T-u-c-c-e-l-l-a.

A (Continuing) And the last one, No. 66, is John Aurrichio.

Q Now, Mr. Whitney, in the section of these documents, all the documents that are received in evidence, where it states "No record of filing",on the top there is a name -- I am looking at Exhibit No. 69 and it says "Arthur Lazravitch", and next to that it says "Address, 479 Hempstead Turnpike".

Do you know if that search included a search for a taxpayer by that name only at that address or any address in the district?

MR. SILVERMAN: The government offers in evidence Exhibits 66 through 70.

MR. BRILL: The same objection.

THE COURT: They will be received.

(Government's Exhibits 66 through 70 were received in evidence.)

MR.SILVERMAN: The government has no further questions of this witness, your Honor.

THE COURT: Cross examination, gentlemen?

MR.ROSENTHAL: We see the last batch of exhibits -- the very last?

(Handed to Mr. Rosenthal.)

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Whitney, how long have you been with the Internal Revenue Service?

A Three years.

Q Three years. Is it safe to assume that in your tour of duty of three years you have come across people who have earned income and did not file income tax returns?

A Yes.

Q And, sir, would that also be true of people who are responsible and viable to file 2290's?

MR. SILVERMAN: Objection, your Honor.

THE COURT: On what ground?

MR. SILVERMAN: Irrelevance as to whether or not other people other than these defendants, what they might have done, other than these particular individuals.

THE COURT: Overruled.

THE WITNESS: Would you repeat the question.

(Question read.)

A Yes.

Q Now, sir, you did find a record of an income tax of John Aurrichio, did you not?

A Yes, sir.

Q Of John and Katherine, to be exact?

A Yes.

Q And that was for an address in Dix Hills --

A Yes.

Q Which is on Long Island, I believe, is it not?

A Yes.

Q And it shows that they filed income taxes for the years -- what was that, 1965 through 1970?

A Yes.

Q And it does not show what the nature of the income was, does it?

A No, it doesn't.

Q It doesn't show how it was earned, whether or not

John Aurrichio was a trucker or a renter of equipment or anything of that sort, does it?

A No.

Q Or whether Katherine Aurrichio was in business?

A No, it doesn't.

Q There is nothing there that would tell us specifically, is that correct?

A Correct.

Q Now, sir, in searching for the files of 2290, you also attempted to check a John Aurrichio, did you not?

A Yes.

Q Of 25 Buckingham Drive, of Dix Hills, New York?

A Correct.

Q And that would be the same taxpayer who is reflected in Exhibit No. 61, is it not?

A Right.

Q Now I show you Government's Exhibit 66, which concerns the 2290 or the use -- what did you say, the road use tax?

A Highway use tax.

Q Highway use tax?

A Yes.

Q Is there any record that John Aurrichio filed any highway use tax?

A No.

Q For that period?

A No.

Q Do you know whether, as you sit there now, he was liable to or required under law to file such a return?

A No.

Q And the same would be true -- I will withdraw that.

Now with respect to Michael Catenzaro, or Anthony Ferrotta, or John -- was it John -- I believe Thomas Tuccella?

A Thomas, right.

Q And there was one other name -- Lazravitch?

A Lazravitch.

Q You found no record that they filed any highway use tax?

A Correct.

Q And do you know as you sit there now as to whether or not there was any requirement under law that they file such a tax?

A No.

Q Now, sir, is it safe to say or would it be fair to say that the fact that someone who did not file an

income tax return does not establish that that person was non-existent?

A Excuse me, I did not get the last part.

(Record read.)

MR.SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

MR. ROSENTHAL: All right.

Q Sir, have you heard of lawyers who did not file income tax returns?

A No, sir.

Q Never did?

A No, sir.

Q You heard of doctors who did not file returns.

MR. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

MR. SILVERMAN: I have no further questions.

THE COURT: Mr. Brill?

MR. BRILL: No, your Honor, I have nothing further.

THE COURT: Any redirect?

MR. SILVERMAN: One question, your Honor.

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Whitney, if Mr. Aurrichio filed under a business name other than his own personal name, John

Aurrichio, would that come through on that return, the one that says John Aurrichio "No filing"?

A Yes.

Q Would it come through on his business return, not his?

A On his employee's identification number, yes.

RECROSS EXAMINATION

BY MR. ROSENTHAL:

Q You are guessing now?

A No. There is a cross check.

Q There is a cross check?

A In the returns are filed with a social security number. We can cross check -- he would have an employee identification number that we could cross check.

Q The highway use tax would show, would it not?

A Only if he was required to file.

Q If he were required to file?

A Depending on this other business he is in.

MR. ROSENTHAL: That is all.

THE COURT: Anything else of Mr. Whitney?

(No response.)

THE COURT: All right, Mr. Whitney, thank you.

(Witness excused.)

MR. SILVERMAN: The government calls as its next

witness Jacob Bressler.

THE CLERK: He is not out there.

MR. SILVERMAN: Your Honor, we have no witness room, so they are either sitting in the courtroom or the probation room.

THE COURT: I wish you would try to arrange that your next witness be on deck, close by.

MR. BRILL: May we approach the bench, your Honor.

(At the side bar.)

MR. BRILL: Your Honor, Mr. Silverman has asked me to produce the work sheets which were prepared by the accountant, Jacob Bressler, who is the next witness being called by the prosecution. I have them, and I have discussed that with Mr. Silverman, and I told him I have them.

I have described them to him. They comply with the copy which he has. They all appear except for the one ended 2-28-70 -- they all appear to be in handwriting. That one is typewritten.

The point I want to make -- and it takes me so long to get to it -- is that this is material that was used in his tax returns which are already in evidence. They add nothing to the tax returns, and they really are a burden because they just fill the record with a lot of cumulative

material which is without probative value.

MR. SILVERMAN: Your Honor, Mr. Bressler will testify that he prepared the tax returns at his own office -- not at Paterno & Sons' office, and that he would examine the books and records of Paterno & Sons, Inc., then prepare these work sheets from those books, and take them back to his office to prepare the tax returns.

I do not want a claim to be made in the future that the material on the tax returns was improperly computed because he did not copy it from the books and records of the corporation.

I want Mr. Bressler to identify from his work-sheets what he got from the books and records and what those books and records show -- that is the purpose of it.

MR. BRILL: I have already informed Mr. Silverman that we do not intend to make any such claim, and I advise your Honor that no such claim will be made.

THE COURT: But he is allowed to prove his case in that fashion.

I will allow it.

MR. BRILL: They should be separately marked.

THE COURT: Pardon?

MR. BRILL: They should be separately marked.

MR. SILVERMAN: Well, they are marked.

I will just transfer them.

MR. BRILL: Let the record show that I have handed to Mr. Silverman the work sheets of the accountant, Jacob Bressler for the fiscal years ended 2-28-66 through 2-28-70.

(In open court.)

THE COURT: While we are waiting for the next witness, let me say we are near the end of your day, which is approaching, let me say a couple of things to you ladies and gentlemen that I will be saying to you at the end of the day.

First, I do not have any reason to believe there will be any publicity about this case, but as a standard instruction let me say to you that if there were any or if there is any you are required to disregard it -- for the same reasons that require me to tell you not to discuss the case anywhere outside the courtroom, require that you not pay attention to any talk or discussion or publicity concerning this case.

So if you see something that has the name Paterno in it, or Denti, do not read a news story of that kind.

The only otherpoint is a quick one: Please plan to resume tomorrow morning at 10:15, and if you will all be punctual we will be finished sooner.

As for today, we plan to quit by 5 o'clock.

MR. SILVERMAN: Mr. Bressler.

J A C O B B R E S S L E R, called as a witness on behalf of the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Bressler, I will ask you to direct your voice to the rear of the courtroom so that the jurors in back can hear you and those at defense table can hear you.

A Yes.

Q Will you please state your full name?

A Jacob Bressler.

Q Where do you presently reside?

A 2000 Linwood Avenue in Fort Lee, New Jersey.

Q What is your occupation, sir?

A I am a certified public accountant.

Q And where are you licensed?

A Licensed in the State of New York and New Jersey.

Q How long have you been a certified public accountant?

A Since 1941.

Q Are you familiar with the firm known as Paterno & Sons, Inc.?

A Yes, sir.

Q How are you familiar with them?

A In 1963 I was retained as their accountant.

Q Areyou presently still working for Paterno & Sons, Inc.?

A Well, I would not express it as "working". I am still retained by them.

Q Well, when you began work for Paterno & Sons, Inc. what was the approximate gross income of the corporation?

MR. BRILL: Objected to as being immaterial, your Honor. It is not within the issues of this case.

MR. SILVERMAN: Your Honor, the government is trying to show the size of the company. One of the issues in the case will be the knowledge of the officers as to the functioning of the company, and one of the elements is how large a company it is, how many jobs they have and what the total income is of the company.

THE COURT: All right, I will allow it.

Q Mr. Bressler, when you first began working for Paterno & Sons, Inc., what was the approximate gross income of the company?

A Well, if you mean their volume, the volume of business, gross receipts?

Q Yes.

A Approximately 400 to $500,000 per annum.

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BY MR. SILVERMAN:

Q What is approximately now, sir?

A Approximately now may be about two and a half to three million dollars.

Q Does that include joint ventures with other companies?

A Approximately so, yes. Actually, you know, as far as joint ventures are concrerned, we do not lump the gross income from joint ventures. We just show the net income.

Q Now, what services do vou actually perform for Paterno & Sons, Inc.?

A At the present time?

Q Yes, sir.

A Well, I perform the usual services of a CPA in relationship to a corporation.

Q What are those services, sir?

A Well --

MR. BRILL: Are you speaking of the current services, sir?

MR. SILVERMAN: Current services.

THE COURT: Do you want it over the years with which we are concerned or just now?

MR. SILVERMAN: Just now,vour Honor. I will

have him describe what he did in those years.

THE COURT: Why is now relevant?

MR. SILVERMAN: I thought it would be more appropriate to say what booksthey have now than saying what books they did not have.

Q Mr. Bressler, when you started in 1963 what type of accounting services did you perform for Paterno & Sons, Inc.?

A They were different than they are at the present time. In those years, what I generally did was to post the general ledger, as it is called, and prepare the corporation income tax returns.

Q Did you also have occasion during the periof of 1965 to 1970 to prepare financial statements of the company?

A Yes, sir.

Q Now, when you first began working for Paterno & Sons, Inc., what type of books and records did they maintain as their business records of the corporation?

A Well, they had at that time payroll records, they had records of cash receipts, cash disbursements, they had general journal, generalledger, and that's about it.

Q Was there any accounts receivable book?

A No, sir.

Q Is there an accounts receivable book now?

A No, sir.

Q Do you know the defendant Michael Paterno?

A Yes, sir, I do.

Q How long have you known Mr. Paterno?

A For -- since about May of 1963.

Q And do you know the defendant George Denti?

A Yes.

Q How long have you known Mr. Denti?

A I should judge since about 1965, I believe.

Q Other than the accounting work that you performed for Paterno & Sons, Inc., do you perform any accounting services for Mr. Paterno and Mr. Denti?

MR. BRILL: Objection, not within the issues of this case.

MR. SILVERMAN: I wanted to establish whether he had a personal relationship besides a professional relationship with the corporation.

THE COURT: I will allow it.

A Would you mind repeating the question.

Q Do you perform, sir, any accounting services for Mr. Paterno other than the services you perform for the corporation?

A My fee at the time I was retained included the preparation of Mr. Paterno's personal tax return and that's the only additional services that I render.

Q Do you perform any accounting services for Mr. Denti?

A I never performed any for him except last vear when I prepared his personal tax return.

Q Whenyou first began working for Paterno & Sons, Inc., did they have any office personel other than Mr. Paterno and Mr. Denti?

A I don't recall Mr. Denti at that time, but I do recall that they had but one girl in the office at the time.

Q Do you recall her name?

A I believe her name was Lois -- no, her name was Louise.

Q Do you recall her last name?

A No.

Q Did there come a time, sir, during the course of the time when you were performing accounting services for Paterno & Sons, Inc. that other office staff replaced this girl that you know as Louise?

A Yes, Louise eventuallv was married and eventually decided to have children and she left Paterno &

Sons employ.

Q Mr. Lester, I'd like to show you Government's Exhibits 50 through 54 and ask you if you recognize those exhibits.

A Yes, sir, I recognize them.

Q How do you recognize them, sir?

A These are income tax returns that I signed at the time that they were prepared.

Q And were these tax returns Government's Exhibits 50 through 54, prepared by yourself or a member of your firm?

A That's correct, sir.

Q Now, after these returns were prepared, were there signatures on them of any of the taxpayers?

A After they were prepared or before?

MR. BRILL: We have already conceded these, your Honor, that they were signed. I am just trying to save a little time.

A Would you mind repeating that? It wasn't clear.

MR. SILVERMAN: I am withdrawing the question, your Honor.

I am withdrawing the question, Mr. Bressler.

Q Mr. Bressler, did you prepare those tax

returns at the offices of Paterno & Sons, Inc. or at your office?

A At my office.

Q Did you remove the books and records of Paterno & Sons, Inc. from the offices -- from the corporate offices to your office or did you do something other than that, sir?

A The usual procedure -- I never removed their records. I actually used to keep their general ledger and I would remove that to my office and work from that.

Q Mr. Bressler, I show you Government's Exhibits 93, 94, 95, 6 and 7 and ask if you recognize those exhibits.

A Yes, sir, I do.

Q And what are they, sir?

A These are work sheets that are prepared before the corporate income tax is prepared.

Q What are they called, what type of work sheets are they, sir?

A The accountant's work sheets.

Q Would they also be known as trial balances?

A They are not known as trial balances, sir. They start out as a trial balance. Initially a trial

balance is recorded on these sheets and then subsequently trial balances are adjusted.

Q Where did you get the information, sir, that is on these work sheets?

A From the general ledger of the corporation.

Q MR. Bressler, do you know what the difference is between a direct and indirect expense?

A Yes, sir.

Q What is the difference?

A Well, usually we consider a direct expense as one that can be related completely to I would say the profit; the operation of a business as against an indirect expense, for example, a good illustration of indirect expense might be rent, which covers the entire area; whereas a direct expense might be considered perhaps shop expense.

Q Would the cost of a particular job, the materials used on a particular job, would that be a direct or an indirect expense?

MR. BRILL: I am going to object to this, if your Honor please, as being without the scope of this gentleman's competence.

THE COURT: As a CPA?

MR. BRILL: Yes, sir.

THE COURT: Is that something you know as a certified public accountant?

THE WITNESS: It's the area of cost accounting, your Honor. And we are taught this type of difference very early in our education. I don't think it's beyond my scope. If it is I will definitely say I would decline to answer or not answer if I felt I didn't have the competence for it.

THE COURT: When you say you were taught it very early, is it something that's elementary?

THE WITNESS: Yes, sir, I would.

THE COURT: Is there any question about his status as a certified public accountant?

MR. BRILL: Oh, no, sir.

THE COURT: I will overrule the objection.

Q Mr. Bressler, on the tax return, are there two separate categories, one for direct expenses and one for indirect expenses?

A There are no sections on this return that speak of direct expenses or indirect expenses.

Q Are administrative expenses, sir, direct expenses?

A No, I would say they are not considered as direct expenses.

Q What about the trucking expenses, sir, are they indirect or direct?

A I would say they are indirect.

Q Sir, is there an item on the tax return called cost of goods sold?

A Yes, there is.

Q And is there a breakdown anywhere on the tax return of the cost of goods sold?

A Yes, sir, in the cost of goods sold section we show the elements that went into the cost of goods sold.

Q Sir, will you please turn to Schedule A on that tax return, sir.

A Yes.

Q On the tax return, sir, on Schedule A, is there an item of cost of goods sold?

MR. BRILL: May we have the exhibit number?

MR. SILVERMAN: Exhibit 50, Mr. Brill.

MR. BRILL: Thank you.

Q Is there a breakdown of cost of goods sold?

A Yes.

Q What elements comprise the cost of goods sold?

A Well, purchases, salaries and wages, equipment rentals, subcontractors.

Q And what is the amount on the tax return for equipment rentals?

A $96,112.

Q And what fiscal period does that cover?

A Fiscal period for the year ended February 1966.

Q I would ask you to examine Government's Exhibits 51 through 54, sir.

MR. BRILL: Your Honor, all of these are now in evidence with our consent and will eventually, with your Honor's permission, be made available to the jury, and they are labeled, and I don't see any point in wasting the time of your Honor and the jury or even ourselves in having Mr. Bressler read what's in the returns.

MR. SILVERMAN: Is Mr. Brill willing to stipulate, your Honor, that the cost of goods sold and equipment rental expense that is included on these returns are the same figures that are in the books and records of Paterno & Sons, Inc.?

MR. BRILL: Have him testify to that but he doesn't have to read what's in the return.

THE COURT: It isn't necessary to stipulate that is Mr. Brill's point, you don't have to have this witness read things that are already in evidence.

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Q Mr. Bressler, the figure that you just read to us for equipment rental expense that is entered on that tax return, is that the same figure that is on your work sheet, sir, for that particlar year?

A Yes, sir, it is.

Q Mr. Bressler, does the corporation maintain a purchase book?

A At the present time it does, yes.

Q During the period of 1965 through 1970, did the corporation maintain a purchase book?

A I can tell you thatthe first tax return shown here which is the year ending February 1966 they did maintain such a book.

Q What type of information is entered in the purchase book of Paterno & Sons, Inc.?

A Well, they usually enter all the purchase bills which that business like theirs would consist of material bills, possibly expense bills of various kinds.

Q Mr. Bressler, during the period of 1965 through 1970, did you compare the checks that were issued by Paterno & Sons, Inc. with the entries made in the purchase book?

A No, sir, I do not.

Q Did there come a time subsequnt to 1970 when

you did start comparing the checks to the entries in the purchase book?

A No. Our usual procedure would be to compare the checks to the entries in the cash disbursements book.

Q Did there come a time --

MR. BRILL: May he finish the answer?

MR. SILVERMAN: Excuse me, were you finished?

A I was trying to point out that the comparison or reconciliation we make is between the checks and the checks that are listed in cash disbursements book but we do not make a comparison between the checks and the bills that are shown in the purchase book. That is, we did not at thattime. However, beginning about two years ago I did start to make a comparison between the invoices and the invoices shown in the purchase book.

Q When did you start making this comparison, Mr. Bressler?

A About two years ago.

Q Do you recall exactly when?

A Yes. I could tell you when. Actually in March of 1972.

Q Mr. Bressler, by whom were you referred to

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Paterno & Sons, Inc.?

MR.BRILL: Objected to as immaterial and irrelevant, adds nothing to the probative value of this case. He has been allowed to go back to '63, which is at least two or three years prior to the commencement of this.

MR. SILVERMAN: Your Honor, the government intends to show that the individual who referred Mr. Bressler to this particular company is not presently or was during this particular period an employee of Paterno & Sons, Inc, who had another business which is relevant to this particular case, your Honor.

THE COURT: Well, on that representation, I will allow it.

Q Who made that referral, Mr. Bressler?

A I was referred to Mr. Paterno by his cousin, Mr. Frank Paterno.

Q And at the time the referral was made, what type of business was Mr. Paterno in, Mr. Frank Paterno?

MR. BRILL: My objection as to this entire line, if your Honor please. It's hearsay, I think it's enough to say that he has told us how he met Paterno & Company and that's as far as it should be allowed to go.

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THE COURT: Come to the side bar and let me hear about it, Mr. Silverman.

(At the side bar)

MR. SILVERMAN: Mr. Frank Paterno at that time was either an employee or an officer of Bernati Printing Company, a company engaged in commercial priting.

THE COURT: Yes?

MR. SILVERMAN: We believe, your Honor, from that informtation the jury can draw the inference that defendants had an opportunity to have the work printed at Mr. Paterno's firm, Mr. Frank Paterno's firm, which was in the business at that time, who was a close relative and who is now an employee of Paterno & Sons, Inc.

THE COURT: Is that going to be your only evidence?

MR. SILVERMAN: We have not had an opportunity to speak to Mr. Frank Paterno yet. As far as that, that will be our only evidence.

THE COURT: Then I won't allow it. It's too speculative.

(In open court)

Q Mr. Bressler, I'd like to show you at this time

a series of 48 checks marked as Government's Exhibits 1 through 48 for identification and ask you if you recognize those checks, sir.

MR. BRILL: Your Honor, these are the checks which have been furnished to us by consent on behalf of Paterno & Sons, Inc. and Michael Paterno for their acceptance in evidence.

MR. SILVERMAN: Does Mr. Rosenthal have any objection, your Honor?

THE COURT: Does that cover you too, Mr. Rosenthal?

MR. ROSENTHAL: Yes, your Honor.

THE COURT: All right, they will be received.

(Government's Exhibits 1 through 48 were received in evidence)

MR. BRILL: They are the same checks, I take it?

MR. SILVERMAN: Yes, they are, Mr. Brill.

Q Mr. Bressler, I'd like to show you now a series of invoices marked as Government's Exhibits 1A through 47A and ask if you recognize these exhibits.

MR. BRILL: May I see them?

MR. SILVERMAN: These are the invoices.

MR. BRILL: I don't know whether this

gentleman ever saw these invoices, but if they are the invoices which we furnished, I consent to their reception, your Honor.

THE COURT: You too, Mr. Rosenthal?

MR. ROSENTHAL: I do.

MR. BRILL: You might ask him whether he has ever seen them. I don't think he has.

THE COURT: Wait, let's not have it both says, Mr. Brill. Do you consent?

MR. BRILL: I do.

MR. ROSENTHAL: I consent.

THE COURT: All right, then, let's receive them?

(Government's Exhibits 1A through 47A were received in evidence)

MR. SILVERMAN: I'd like to point out to the Court's attention at this time that there are -- the numbers are not continuous. I have given the exhibits to the clerk, the numbers that are not corresponding are -- there is no 13A, there is no 29A, there is no 35A. It ends at 47A, your Honor.

THE COURT: Okay.

MR. ROSENTHAL: Mr. Silverman, may I see those checks in the meantime while you are continuing your

examination.

MR. SILVERMAN: Yes (handing).

Q Mr. Bressler, during the last several months, did you have an opportunity to have a conversation with either of the defendants Michael Paterno and George Denti concerning this matter?

MR. BRILL: I object to the compound question. I have no objection, if it's the legal theory I anticipate, to his statement with respect to a conversation with each if he did have one.

THE COURT: All right, ask one at a time.

Q Mr. Bressler, during the last several months did you have an opportunity to have a conversation with the defendant George Denti?

A Yes, sir.

Q And during the last several months, Mr. Bressler, did you have an opportunity to have a conversation with the defendant Michael Paterno?

A Yes, sir.

Q Did you have a conversation with them when they were both present?

A Yes, sir.

Q And did this conversation relate to the subject matter of this case?

MR. BRILL: Time and place, please?

THE COURT: Pardon?

MR. BRILL: Time and place, please?

THE COURT: We will get to that. Answer this question in the meantime.

A Yes, I would say so.

Q Where did this conversation take place?

A In their office.

Q And who else was present besides Mr. Denti, Mr. Paterno and yourself?

A No one else.

Q And approximately when did this conversation take place?

A It could have taken place about a month ago or two months ago.

Q And was this conversation in regard to these checks?

A No, sir.

Q The conversation was not about these checks payable to these payees?

A No, sir.

Q What was the nature of the conversation, Mr. Bressler?

MR. ROSENTHAL: It's objected to if the

exactly when it was. Itwas a month before the middle of January so the conversation took place in December.

MR. BRILL: We didn't get any 3500 material on this, your Honor.

THE COURT: Is there any?

MR. SILVERMAN: No, there isn't any, your Honor.

MR. BRILL: Just drawing on my limited experience, it seems to me that if Mr. Ayers was present he would have made a report of that conversation and I think that would come under that heading of 3500 material. It may very well be that Mr. Silverman made scratch notes which would result in work product and maybe not 3500 material but Ayers, as a special agent would.

THE COURT: He can have it checked overnight.

MR. SILVERMAN: I can make a statement on the record that in all my interviews with all my witnesses who did appear I was the only one who made notes and from those notes made my questions and answers. There were no memorandum made by each of theagents who was present at any one of those meetings.

THE COURT: Okay, then that's your representation. If there is any desire to pursue it further, Mr. Brill and Mr. Rosenthal canpursue it further. Now

Court please. I would request that we have an offer of proof at the side bar. I don't know where we are going with this.

(At the side bar)

MR. SILVERMAN: Mr. Brill and Mr. Rosenchal, in my office, I interviewed Mr. Bressler with Agent Ayers and Agent Rizzo present. At that time I asked him if he had a conversation with the defendants in this case, and he said yes, he did. I said, "What was that conversation?"

He told us that the conversation was about these checks and that Michael Paterno and George Denti both told him that these truckers were real truckers who did business with the corporation, Paterno & Sons, Inc., and that they paid for the services of the truckers that perform the services.

THE COURT: Mr. Rosenthal, Mr. Brill?

MR. SILVERMAN: He also ssid that -- what I expect to elicit is that he said that Paterno and Denti said they had hired private detectives to look at these five individuals and had not been successful in locating the five individuals.

MR. BRILL: This is a month or two ago?

MR. SILVERMAN: Yes. I will tell you

let's get to this. Is there any objection to this?

MR. BRILL: I think in view of the representation and without any basis we are not in a position to make an objection.

THE COURT: You don't have to make objections. I just want to know.

MR. BRILL: I understand.

(In open court)

THE COURT: All right, can we have the pending question read.

(Question read)

THE COURT: All right, you may answer.

A What I'd like to bring out is that I visit my client's office on the average of once a month and you are asking me for the nature of a conversation. I could have had many conversations. I really would like to know which conversation you aer interested in.

Q The conversation I am referring to, Mr. Bressler is the conversation that occurred in December of last year, 1973.

A As far as I remember, we kicked around the problem of how these checks were cashed in the bank and whether it was generally the custom in the trucking industry to be paid that way. That's about all.

Q Mr. Bressler, specifically, did you have a conversation with the defendant Michael Paterno and with the defendant George Denti concerning the existence of these truckers?

A Not specifically these truckers,but the problem that exists in that industry when -- what I did say to him was that I didn't understand why he was being held responsibe for either the existence or the non-existence of those truckers --

Q Did they make any statement, Mr. Bressler, on the existence or non-existence of these truckers?

A No, they didn't make a statement as to the existence or non-existence, but we did discuss the problem of the truckers.

Q Mr. Bressler, in January of this year, were you interviewed in my office by Special Agent Walter Ayers and a revenue agent Tony Rizzo and myself?

A I don't remember Mr. Ayres there.

Q Was Mr. Rizzo there?

A Mr. Rizzo was there. Mr. Ayres was not there.

Q At that interview, did you make any statements concerning a conversation between yourself and Mr. Denti and Mr. Paterno?

A I don't recall which statement you are referring

to.

Q Did you make any statements in my office at that time to Mr. Rizzo concerning any private detectives?

A We had a conversation that lasted perhaps about an hour.

THE COURT: No, he just asked you a specific question: Did you say anything about private detectives?

THE WITNESS: I don't recall.

THE COURT: You do not recall?

THE WITNESS: No, sir. Because we discussed so many things it is impossible for me to remember.

THE COURT: Do you recall whether you made a reference in words or substance to private detectives?

THE WITNESS: To private detectives?

THE COURT: Yes.

THE WITNESS: No, sir; I don't recall that I mentioned that at all.

THE COURT: You mean you may or may not have or you did not?

THE WITNESS: I don't recall that I referred to private detectives.

THE COURT: Does that mean you may or may not have or that you did not make such a reference?

THE WITNESS: I would say I did not make such a

reference.

Q At that meeting, Mr. Bressler, did you make any mention of the fact of any detectives hired by Paterno & Sons, Inc., the corporation?

THE COURT: Wait a second.

MR. BRILL: I object to the question: Did you make any mention of the fact. It assumes a fact, your Honor.

THE COURT: Yes. I will sustain that.

Q Mr. Bressler, did you state at that time to Revenue Agent Rizzo that Paterno & Sons, Inc. had hired detectives to find these five truckers?

A I was aware that they had made such an effort, but --

Q That is not my question. Please answer my question.

A I can't because I don't remember that.

Q Is your testimony that you did or did not make that statement?

A I can't tell you either way; I don't recall.

Q Did youever, Mr. Bressler, have a conversation with either -- with the defendant Michael Paterno concerning the existence of these truckers?

A Yes, sir. Sure.

Q And did Mr. Paterno ever make a statement to you as to whether or not these truckers existed or didn't exist?

MR. BRILL: May we have the time and place, please?

THE COURT: He said "ever".

MR. BRILL: "Ever" is a long time, sir.

THE COURT: I realize that, Mr. Brill.

You may answer.

A I don't recall that he made a statement either way.

Q Did you ever have a conversation with Mr. Denti concerning the existence or non-existence of these truckers?

A I can't answer that question either because we had a conversation about the truckers but not necessarily about the existence or non-existence of them.

Q Now, Mr. Bressler, when did you first find out that books of Paterno & Sons, Inc. were being examined?

A When Mr. Rizzo came into the office.

Q Approximately how long ago was that, sir?

A It may have been about three years ago.

Q And did you appear before the grand jury and testify in this matter, sir?

A Yes, sir, I did.

THE COURT: Mr. Silverman, it is 5 o'clock and I told the jury we would stop at about that hour, and I told everybody.

MR. SILVERMAN: I have two or three more questions, your Honor.

THE COURT: All right.

Q Your testimony, Mr. Bressler, that since the examination of the books and records started by Revenue Agent Rizzo until the present you did not have a conversation concerning the existence of these truckers with Mr. Michael Paterno?

A On the contrary I did have a conversation with them.

Q And did Mr. Paterno at any time during that conversation discuss the existence or the non-existence of these truckers?

A Not in those words, no.

Q Did he ever tell you that they existed?

A No, sir.

Q Did he ever tell that they didn't exist?

A No, sir.

Q Did you ever ask him?

A No, I never questioned him about that.

Q Did Mr. Denti ever tell you that they existed?

A Not in so many words, no.

Q In any words, sir?

A No. No, it never came to that. We never discussed it in those terms.

Q Did Mr. Denti ever say they didn't exist?

A No, sir.

MR. SILVERMAN: I have no further questions of this witness.

THE COURT: All right, let us suspend for the day and let's come back at 10:15.

Don't discuss the case, ladies and gentlemen. Good evening.

(Adjourned to Thursday, February 7, 1974, at 10:15 a.m.)

WITNESS INDEX

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UNITED STATES OF AMERICA

vs.

MICHAEL PATERNO, et al.

February 7, 1974
10:30 a.m.

Trial resumed.

- - -

(In open court; jury not present)

THE COURT: Gentlemen, two of the jurors have told Mr. Swanciger they want to talk to me about the possibility, I gather, of being excused. I think it best to talk to them together with you rather than privately unless anybody thinks I preferably ought to talk to them privately. What's your pleasure on that?

MR. SILVERMAN: The government's position, your Honor, is that we would like the jury as they are constituted, and would press upon the Court to do everything in its power to try to retain these people as

jurors, and I would be satisfied if you would speak to these people privately under that understanding.

MR. BRILL: That's my view, your Honor.

MR. ROSENTHAL: Mine, too.

THE COURT: With your consent, I will speak to them privately. I will refrain from telling them how to decide the case, but I will talk to them about the desirability of their staying in it unless there is some overwhelming reason why not.

The only thing that occurs to me, and I am of two minds about it, is this: In light of the time character of the estimates you have given me it strikes me with luck and cooperation we might finish in two weeks. Does that seem conceivable to you?

MR. BRILL: We are striving in that direction.

MR. SILVERMAN: It seems conceivable.

THE COURT: I have that impression. I am not going to hold anybody to it. And I do appreciate that you would on your best give me these judgments as well as you can.

But I think unless you think it unwise that efforts are being bent in that direction and if our estimate proves to be more accurate than we hope, and if they run into a real jam they can come back in a couple of

weeks and I will talk to them, but at the moment, I think they ought to stay.

Is that acceptable?

MR. BRILL: I am satisfied, Judge.

MR. ROSENTHAL: Yes.

THE COURT: All right, let me talk to them and I will try not to say anything indiscreet.

MR. SILVERMAN: Your Honor, before the jury comes in may we discuss two matters without the jury being present?

THE COURT: Sure. As soon as I speak to these two jurors I will be back out. One juror phoned up and said he will be about ten minutes late so I think we will have time.

(Recess)

(In open court; in absence of the jury.)

THE COURT: Gentlemen, for the time being it is my judgment -- and I have conveyed to Messrs. Scher and Ghisoni -- that they should stay on the jury. They will. If further developments in the trial and in their personal situations seem to require it, they have been invited to talk to me again.

If I have any further thoughts about them or any other juror I will share them with you.

MR.BRILL: Thank you, sir.

THE COURT: Now we had some business.

MR.SILVERMAN: Yes, your Honor.

The first matter relates to the subpoena that I discussed yesterday, that was served on Paterno & Sons in December, calling for certain payroll records, and Mr. Brill contends that there was a search made, and there is still an ongoing search made for those records. In order not to take the Court's time at present, at some time at the Court's convenience during the next week or so, we would like the Court to take sworn testimony from those people who had custody of them, to determine where they were last seen, and when and where they were lost.

THE COURT: I think it is appropriate.

Is there any objection?

mkbr

MR. BRILL: I think it may be premature. I told Mr. Silverman that some time this afternoon, inasmuch as we would not be in session, that I expected there would be a definitive answer.

THE COURT: I do not understand. Did I tell you we would not be in session this afternoon?

MR. BRILL: That is what I understood.

THE COURT: I am sorry;I made an error. I meant a week from today. Did I say this afternoon?

MR. BRILL: Yes.

MR. SILVERMAN: It is my understanding also.

THE COURT: If you all planned on it --

MR. SILVERMAN: I have my witnesses here, the Court requires it. If not, I will call certain people and tell them not to come, if that is what the Court plans.

THE COURT: Well, I am sorry but we are going to go ahead. I apologize for my error, but the burden is on the government, and if Mr. Silverman is able to go ahead he should.

I just had the dates mixed up. It is a week from today -- not today -- when we will have roughly a half day, so we will proceed today.

MR. BRILL: I may be at a disadvantage because I spent most of last night looking at this mass of material

which had been given to me the night before but which I couldn't read because of the eye drops that had been put in my eyes that evening.

THE COURT: What is that mass of material?

MR. BRILL: These are the work papers of Mr. Rizzo who will be the next witness. I do not know what Mr. Silverman's order will be. He has told us generally what he plans to do, and he has furnished us with a considerable amount of 3500 material, but in all candor I am not really ready to go forward with other witnesses, havingplanned on today, this afternoon.

THE COURT: I appreciate your candor.

Mr. Rizzo is a government agent?

MR. SILVERMAN: Yes, your Honor.

THE COURT: All right, if you need him recalled, after you look through that material, Mr. Brill, he will be recalled.

MR. BRILL: I have gone through it -- that is what I did.

THE COURT: All right, you let me know the specific disadvantage which you find yourself in, and whatever it is, having in mind your long experience and your agility or capacities, we will cope with it. I am sure it is manageable.

MR.BRILL: Thank you.

MR. ROSENTHAL: I have this problem, your Honor. The checks that were introduced in evidence yesterday with the consent of both Mr. Brill and myself have upon them certain legends that were not on them at the time the checks were issued or cleared the bank.

I have called it to Mr. Silverman's attention. I did not really call it to the Court's attention at the time we consented to it, and in respect to certain checks that bear the initials of my client, Mr. Denti, which were put on at the request of the agents of the Internal Revenue Service at a time when he was interviewed or questioned, I am certain that there is no question but that Mr. Silverman will concede that they were not on the checks prior to their being negotiated.

There are three checks which have, I believe, in pencil "No Inv.", which is an abbreviation for "No Invoice."

I have been informed by Mr. Denti that this was put on after the checks had cleared, at the request of Mr. Rizzo when they were going through the records of the company, and could not find invoices in the files -- on the backs of those three checks, and I would like that made clear to the jury, that in fact --

THE COURT: I am not going to convey to the jury things that are conveyed to you by Denti.

MR. ROSENTHAL: No.

THE COURT: Unless they are put in by stipulation. If Mr. Silverman agrees, go ahead and do that.

MR. SILVERMAN: Your Honor, in all fairness, the checks in question that Mr. Rosenthal is talking about were the initials in the upper right-hand corner of the checks at the time of the Q and A between the revenue agent and Mr. Denti, to identify the checks, and they were identified at that time.

THE COURT: So you agree with that.

MR. SILVERMAN: Yes.

THE COURT: All right.

MR. ROSENTHAL: As to the other three checks, have you been able to speak to Mr. Rizzo about that?

MR. SILVERMAN: I have not spoken to Mr. Rizzo because I have been in here and he has been out there, but I assume from what I was told by Mr. Ayres that the pencil marks were placed there while Mr. Rizzo was going through the books and records of Paterno & Sons, Inc.

THE COURT: Placed there by whom? By Mr. Rizzo?

MR. SILVERMAN: By Mr. Denti, I believe.

THE COURT: You can bring thatout in the testimony.

We do not need to discuss that in the absence of the jury.

MR.SILVERMAN: There are two other matters, your Honor -- the first being two exhibits that the government intends to offer to Mr. Rizzo. They are Government's Exhibits 172 and 1973 (handing).

These are summaries of Mr. Rizzo's work product which Mr. Brill and Mr. Rosenthal have seen.

Mr. Brill suggests to me that he objects to the words "alleged trucker" in the upper left-hand corner of the first exhibit, and "name of trucker" in the upper left-hand corner of the second exhibit.

Those are basically what the government intends to prove. I do not think it is prejudicial in any way. If the Court thinks it is prejudicial, the government will attempt to go through all the exhibits -- we have copies for the jurors so that they can follow Agent Rizzo's testimony.

The government does not believe it is in any way prejudicial, because that is the whole basis of the government's case -- the allegation as to whether or not these truckers existed.

THE COURT: I think you ought to make it "name of trucker" -- either way the jury understands it - but I think calling it "alleged trucker" in this informal piece

of paper has a certain undertone or overtone that Mr. Brill is entitled to object to.

MR. SILVERMAN: Would it be satisfactory if the government struck out the word "alleged" and just have it "trucker"?

THE COURT: If it is absolutely legible, it seems to me that is okay.

Do you have any objection to that?

MR. BRILL: No. I thought we had reached an agreement --

THE COURT: If that is agreeable with you, let us do it.

MR. BRILL: I thought we had agreed to change it to "payee".

MR. SILVERMAN: This will take the Court's time to go through each one and cross it out and right in the word "payee".

THE COURT: Are they all truckers, these payees?

MR. BRILL: No, sir, they are not -- that is my point.

THE COURT: You mean on 173 where it says "name of trucker" they are not all truckers?

MR.ROSENTHAL: That is correct.

MR. BRILL: They are not all truckers.

THE COURT: Then I think you should say "payee".

MR. SILVERMAN: But the point of Agent Rizzo's testimony is that he does not know which one on Exhibit 173 a-re truckers.

THE COURT: If he does not know he certainly does not want to list them by "name of trucker." They are all payees -- right?

MR.SILVERMAN: In some cases, yes.

He got the figures from the purchase journal and the purchase journal is not --

THE COURT: They are all names of payees.

MR. SILVERMAN: That is correct.

THE COURT: Then put "name of payee".

Is that agreeable?

MR. BRILL: Yes, sir.

As a matter of fact --

THE COURT: I have ruled -- "name of payee" on both exhibits. We can't spend all day on one of these tangential questions.

Anything else?

MR. SILVERMAN: Yes, your Honor. The last matter refers to the witness who was on the stand yesterday. I had made an informal application at the side bar to declare that witness hostile. I would like to make

that formal application now.

THE COURT: Is it opposed?

MR. BRILL: It is, your Honor. I do not think that there is a basis for declaring Mr. Bressler a hostile witness.

THE COURT: I have observed him. I think there is a basis. The application is granted.

Anything else?

(No response.)

THE COURT: By the way, gentlemen, did I tell the jury that we were going to be off this afternoon?

MR. BRILL: That is my impression, and I had made plans.

THE COURT: Well, if they had planned to have an operation or something this afternoon I may have to switch.

J A C O B B R E S S L E R, resumed.

THE COURT: Let us have the jury in.

(Jury in the box.)

THE COURT: Good morning, ladies and gentlemen.

A couple of things before we start.

First, I repeat that everybody is aware that jury service is an inconvenience to many and a hardship to some. The institution is very cumbersome. Bureaucrats, Judges and others, in most countries handle the

administration of the criminal law without juries. It goes much quicker. It is thought to be a less satisfactory way of doing justice by us, and so all of those who work professionally in the legal system are put to extra work, if you will, in order to administer this system of administering the criminal as well as civil justice with lay persons as the ultimate deciders of the critical questions -- that is a two-way thing.

Obviously, I am not going to make a long oration about it, but if the enterprise is to function, it has to be because the citizens want it, and therefore because normally in the regular rotation when their turns come they will somehow manage in most cases to set aside the time and make the sacrifices for this public function.

Now I excused a lot of people for one reason or another, and with the rather speedy way that these things need to be done, unless we spend a year on every case, I am not positive but if I took time to deliberate that I would make exactly the decisions that I made yesterday in the course of jury selection.

I may excuse some people and not others in ways that could bedebated -- and I am prepared to acknowledge that.

I can only say that having no personal acquaintance

with any members of the panel, I did my best. I say that because in this case, as I think you know, two of your number have renewed applications to be excused, and I have denied them.

In the course of a discussion with one of those members of the panel I was asked by him whether jurors are permitted to put questions, if they have any, about the facts of the case.

The answer is "Yes," and I told this member of the jury that although the answer is "Yes", it is not encouraged.

He said it was not very understandable to him, and perhaps it is not to others, and I will explain that. If a juror has a question about the evidence, you may write it on a piece of paper and hand it to the clerk who will give it to me, and I will make a judgment, perhaps together with counsel, whether it is a suitable question to be put. Our system, for better or worse -- and there are reasons for criticizing it -- leaves the organization, the management and investigation and presentation of facts to the adversary parties in a lawsuit. That is the so-called adversary system. Other countries have different systems -- the inquisitorial system, where judges take charge of the questioning. I am not prepared to say which is better or which is worse. Perhaps something

in between is best.

You will observe for the most part I will not participate very heavily in the questioning of witnesses, because primarily that is left to the lawyers in our system, and I am a somewhat trained person in this thing.

The experience of most of us in the management and elicitation is that with all their intelligence and wisdom and concern, jurors are not really in the position to ask questions that actually in the long run advance the case more than the efforts of the opposing attorneys do, and that is what I mean when I say we do not encourage these questions.

Some questions may seem very important to you, but you have not investigated the case, you do not know about it -- they have, and primarily we leave it to them.

That takes care of that subject.

Now finally, I am given to understand that I probably said something I did not intend to yesterday.

I think I indicated, at least to the lawyers, and probably to you, that we were going to have a half day today. What I really had in mind, if I did say that, was because of certain court business we are going to have roughly a half day a week from today, on February 13th. Now if I misspoke myself I want to ask whether

any of you are exceedingly discommoded by spending the normal court day today. If you had planned other things -- and I want to say in that connection that we are going to try, although I am being long winded today, to move this case along and get done as promptly as possible, and, if possible, in less than the three weeks that I spoke about.

Now is anybody going to be put through a hardship to work until 4:30 today?

That is my question.

(No response.)

THE COURT: I will report to you that at least one of the lawyers is being put to some hardship, but he has kindly agreed that we will go ahead nevertheless.

Now we are ready for cross examination, I believe, of Mr. Bressler.

MR. BRILL: Your Honor indicated a minute ago that a half day would occur a week from today, that by my calendar is the 14th of February rather than the 13th.

THE COURT: I do appreciate your having an accurate calendar. You are absolutely right, and I am absolutely wrong.

Now let me get that straight. It is a week from yesterday. And when I say -- I meant to say roughly a half day, and what I mean is we are going to have to

suspend by 3 o'clock, whichmay mean that we [illegible] have lunch and a very short afternoon session in order [illegible]e the time as frugally as we can.

Thank you, Mr. Brill.

MR. BRILL: Thank you.

May I proceed, your Honor?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. BRILL:

Q Mr. Bressler, you were asked by the [illegible]ecutor yesterday about some conversations that he cl[illegible]s you had in December or January -- December 1973 t[illegible]nuary 1974. Do you recall that?

A I recall the question, yes, sir.

Q Yes. Now, isn't it true that actual[illegible]you had had conversations with representatives of the pr[illegible]cution staff -- specifically Mr. Ayres, who sits her[illegible]oday next to Mr. Silverman, and Mr. Rizzo on Janua[illegible]23rd, or don't you have a recollection?

A You have an advantage over me. I hav[illegible]not kept a diary as to when I spoke with these people.

Q All right.

A I have spoken to Mr. Ayres and to Mr. [illegible]zzo, yes, but I can't tell you when.

Q I will show you this document, which has been marked Exhibit 3501 for identification, and I invite your attention to the date (indicating).

I ask you to lookat it and tell us whether in fact you had a conversation with Mr. Rizzo and Mr. Ayres on or about that date.

A (After examining) Yes,sir, I did.

Q All right.

Now, in the course of that conversation was there any reference, having now read it -- is your recollection refreshed as to whether there was any reference to conversations with Michael Paterno concerning the truckers or truckers' invoices?

A I do not see any reference in this report, nor do I recall any.

MR. SILVERMAN: Objection, your Honor. It is whether he recalls.

THE CORUT: Yes. He is not asking what you see in that report. He is asking you whether, after looking at it, you have in your memory any such information?

THE WITNESS: The answer is "no," because, secondly, this is a very carefully written report --

MR.SILVERMAN: Objection.

THE COURT: He is not asking you about the report.

Please listen to the question and answer it.

THE WITNESS: The answer is "no".

Q All right. Following that conference did you appear before a Federal Grand Jury in this courthouse?

A Yes, sir.

Q Did that appearance on February 6, 1973, in the afternoon of that day?

A Yes, sir.

Q Prior to your testifying --

MR. BRILL: May I stand here, Judge?

THE COURT:Yes, but you are standing in front of some of the jurors.

MR. BRILL: I am sorry.

Q Prior to your testifyingohere yesterday, and in the course of your preparation for your testimony were you shown any documents at the office of Mr. Silverman?

A No, sir.

Q Did he review with you your grand jury testimony?

MR. SILVERMAN: Objection, your Honor. What date is Mr. Brill referring to now -- the grand jury appearance or his conversation with me in my office in January of 1974?

THE COURT: Well, is that an objection?

MR. SILVERMAN: I am confused as to what the question

is referring to -- which time period?

MR. BRILL: Well, I do not know what the date is, Judge, but I will put another question.

THE COURT: Go ahead.

BY MR. BRILL:

Q Prior to yesterday, when was the last time that you talked to Mr. Silverman about your testimony in this case?

A About a month ago.

Q About a month ago. At that time did he review with you the testimony that you gave before the grand jury on February 6, 1973?

A Yes, sir.

Q And did he at that time show you a copy of your testimony before the grand jury?

A Yes, sir.

Q Did he review the questions and answers that you were asked that time efore the grand jury?

A I do knot know whether he completely went over them, but I know he went over a number of them, yes.

Q Did you testify before thegrand jury with respect to conversation with Mr. Paterno that you had not discussed with him any of his trucking invoices?

A Yes,sir, I did.

Q And did you say so under oath at that time in February of 1973, responsive to a question by the prosecutor?

A Yes, sir, I did.

Q Do you recall whether at that time, before the grand jury, in February of 1973 you were specifically asked about particular truckers and whether you had discussed those particular truckers --

MR. BRILL: I am referring to page 4 of Exhibit 3502, your Honor --

Q -- particular truckers with Mr. Paterno, Michael Paterno?

A I am sorry, I did not follow your question.

Q All right. Do you recall whether, when you were before the grand jury on February 6, 1973, you were asked whether you had specific conversations with specific truckers --

A Yes, I recall.

Q -- with Mr. Paterno?

A Yes, sir.

Q About specific truckers?

A Yes, sir, I recall that.

Q Do you recall what you told the grand jury at that time?

A Yes, sir, I do.

Q Will you tell the Court and jury what you said in

February 1973?

A. I said at that time that there had never been any discussions between myself and Mr. Paterno pertaining to truckers.

Q. Or truckers' invoices?

A. Or truckers' invoices.

Q. And that is what you told the jury yesterday.

THE COURT: I won't allow that. I do not want you to ask him what he told the jury yesterday. We have a transcript, and if the jury wants to know that --

MR. BRILL: All right, sir.

Q. Is there any question in your mind with respect to the answer which you have just given us, that you testified --

A. This was not the question that was asked me yesterday, sir.

Q. The question you were asked yesterday was whether there was a conversation --

THE COURT: No, I really don't want you to debate what happened yesterday. It is on the record. Ask another question.

Q. Do you say today that you had not discussed with Michael Paterno at any time either the truckers, including those whose names were mentioned to you before the grand jury, or trucking invoices?

A. No, sir, I can't answer that. I haven't discussed them with him. I answered to the grand jury at the time I was before the grand jury, and at the time the answer was "No."

Q. All right.

A. Subsequently I did have conversations with him after I spoke to the grand jury.

Q. With respect to specific truckers --

A. Not specific truckers, no -- not specific truckers; general truckers, or the question of the truckers -- and that occurred subsequent to my appearance before the grand jury.

Q. And can you say when that occurred?

A. I believe it occurred within the past few months.

Q. And did you report that conversation to Mr. Silverman?

A. No, sir.

Q. Or to Mr. Rizzo?

A No, sir.

Q. Or to Mr. Ayres?

A. No.

MR. BRILL: Thank you. I have no further questions.

MR. ROSENTHAL: I have no questions.

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q. Mr. Bressler, so that the record is clear, when was the first occasion that we ever met?

A. You and I? A month ago.

Q. Where was that, sir?

A. In your office.

Q. Who was present at that time, sir?

A. Mr. Rizzo and yourself.

Q. And is it accurate to state, sir, that you appeared before the grand jury on February 6, 1973?

A. Yes, sir.

Q. Did we meet on that occasion, sir?

A. No, sir.

Q. The first time that we ever met was one year, approximately, after you were before the grand jury?

A. Correct.

Q. And at the time that we had a conversation were you also asked questions by Revenue Agent Rizzo in my office?

A. I can't recall that he asked any questions, no, sir.

Q Did you tell him at that time that you had several weeks before -- several weeks before January -- that would

put it some time in December -- that you had a conversation with the defendants Paterno and Detni?

A I had a conversation with Mr. Rizzo possibly before we started our discussion, when he led me to your office. I spoke to him. I can't remember --

Q While you were in my office did you have a conversation with Mr. Rizzo, at which time you told him that several weeks before you had a conversation with the defendants Paterno and Denti?

A I can't recall. I may have had such conversation, yes.

Q What is your best recollection, sir?

A It is difficult for me to say whether I spoke to him in your office or outside the office.

Q Do you remember any conversation?

A With him? I spoke to him before I came to you, but I can't recall what because it was only a friendly conversation.

Q In either one of those places, either coming to the office or while in the office, did you have a conversation with Agent Rizzo concerning the defendants Paterno and Denti?

A Yes. That is the only thing I would speak to him about.

Q. What was the nature of that conversation?

A. I can't recall, sir. It was just general. It was nothing specific.

Q. Did it include the mention of truckers?

A. I really, honestly can't remember. It may have but I don't remember.

Q. What is your best recollection, sir?

A. I don't think so.

Q. Did it include the mention of the words "private detectives"?

A. It is difficult for me to remember. I don't recall it.

Q. What is your best recollection, sir?

A. I honestly don't remember it.

Q. You don't remember whether the words "private detectives" came up in a conversation with Agent Rizzo on January 10th of this year in my office?

A. No, sir, I don't remember.

MR. SILVERMAN: I have no further questions, your Honor.

THE COURT: Anything else of Mr. Bressler?

MR. BRILL: No, your Honor.

THE COURT: All right, Mr. Bressler.

(Witness excused.)

MR. SILVERMAN: The government calls as its next witness Anthony Rizzo.

A N T H O N Y J. R I Z Z O, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Rizzo, so the people in the back of the jury and the people at the defense counsel table will be able to hear you, will you please keep your voice up?

A Yes, sir.

Q Mr. Rizzo, where are you presently employed?

A U. S. Treasury Department, Internal Revenue Service.

Q What is your position with the Internal Revenue Service?

A I am an internal revenue agent.

Q And how long have you been employed by the Internal Revenue Service?

A 17 years.

Q And during what period of time does that span, sir?

A From January 1957 upto the present time.

Q Have you studied accounting, sir?

A I have.

Q Where have you studied accounting?

A St. John's Univerity.

Q And after leaving school, wereyou directly employed by the Internal Revenue Service?

A No.

Q Where were you employed, sir?

A The Lummus Company.

Q What type of work did you do for the Lummus Company?

A I was an accountant.

Q And what were your duties there, sir?

A I prepared financial statements and did other accounting work.

Q Mr. Rizzo, are you a certified public accountant?

A No.

Q Do you hold any licenses with any state?

A No.

Q What are the duties of an Internal Revenue agent?

A To examine corporate income tax returns, individual income tax returns, partnership income tax

returns.

Q What does that work actually entail?

A Well, you are supposed to compare what was reported on the return to what is on the taxpayer's books and records.

Q During the course of your employment as an Internal Revenue agent, approximately how many income tax returns, both corporate and personal, have you examined?

A In excess of a thousand.

Q And during the course of your employment, Mr. Rizzo, as an Internal Revenue agent, did there come a time when you were assigned the examination of a corporation by the name of Paterno & Sons, Inc.?

A Yes.

Q And when were you first assigned to that examination?

A Approximately July 1970.

Q Now, during the course of your work, did you have an opportunity to examine the books and records of Paterno & Sons, Inc.?

A Yes.

Q And when did you actually start the examination of the books and records of the corporation?

A Early in December of 1970.

Q And where did this conversation take place, Mr. Rizzo?

A At the corporate offices at 204 City Island Avenue in the Bronx.

Q Now, on your first occasion to go to these offices, did you meet anyone at that time?

A Yes.

Q Who did you meet on that occasion, sir?

A A George Denti. And Michael Paterno.

Q The two defendants, is that correct?

A Yes.

Q Did you meet anyone else at that time?

A Yes, the corporate accountant.

Q What was his name?

A Jacob Bressler.

Q And at that time were you shown any of the books and records of the corporation?

A I was.

Q And who showed you these books?

A Mr. Bressler.

Q What period of time did these books cover?

A The fiscal year ending February 28, 1966 to February 28, 1970.

Q Mr. Rizzo, could you please explain to the

ladies and gentlemen of the jury what the difference is between fiscal and calendar year?

A Well, a calendar year runs from the month of January up to December. A fiscal year starts in any month subsequent to January. In other words, it would run from February to January or March to February.

Q And the books and records that you were shown covered a fiscal year rather than a calendar year?

A Yes.

Q Would you please describe the types of books and records that you were given on that particular occasion?

A I was given the cash disbursements book, the cash receipts book, general journal and purchase journal.

Q Now, did you compare the books and records of Paterno & Sons, Inc. with the income tax returns that were filed during the years to '66 through '70?

A Yes.

Q How was the income reported, on what type of basis?

A The accrual basis.

Q What is the accrual basis?

A The accrual basis, you report income as you bill, rather than receive money, and you report an expense

as you receive a bill, and you can claim this particular expense or report that income up to that time.

Q And what is the counterpart to the accrual basis?

A The cash basis.

Q And what is the cash basis?

A You report income as received and you claim expense as paid.

Q The firm of Paterno & Sons, Inc., their books were kept on what type of basis?

A Accrual basis.

Q Now, the personal income tax return, individual return filed by the average taxpayer, is that--

MR. BRILL: That's objected to, if your Honor please.

THE COURT: On what ground?

MR. SILVERMAN: I didn't finish the question.

MR. BRILL: The average taxpayer has no relation to this case.

THE COURT: Wait until you hear the rest of the question. It may not be a problem.

MR. BRILL: Sorry.

Q Were those returns filed on the cash basis or the accrual basis?

THE COURT: Do you object?

MR. BRILL: I do, sir.

THE COURT: Overruled.

A. Usually on a cash basis.

Q. And the corporation, the corporate returns that you have examined were most of them on the accrual basis or the cash basis?

MR. BRILL: I have an objection, your Honor, same ground.

THE COURT: I take it, Mr. Silverman, this is merely for general background.

MR. SILVERMAN: General background, your Honor.

THE COURT: Overruled.

MR. BRILL: Will your Honor be good enough to tell them this doesn't have anythingto do with this case?

THE COURT: No, I won't tell them that. If I thought that I would not allow the question.

MR. BRILL: I thought it was received only as a matter of general background.

THE COURT: I don't want to extend this, but the background is received because it's thought to have something to do with the case. You may answer if you

remember the question.

A. Would you repeat that question, pleaes?

Q. The corporate returns that you examined while being a revenue agent, have they been mostly on the accrual basis or on the calendar basis?

A. On the accrual basis.

Q. After your examination of the books and records was the income reported in the books and records of Paterno & Sons, Inc. in agreement with the income reported on the tax returns that you examined?

A. Yes.

Q. Now, was the cost of goods sold reported in the books and records of Paterno & Sons, Inc.in agreement with the cost of the goods sold stated on the tax returns?

A. Yes.

Q. And was the rental equipment, the equipment rental expense, in agreement in the books and records of Paterno & Sons, Inc. with the equipment rental expense stated on the returns?

A. Yes.

MR. BRILL: That is part of the cost of goods sold, your Honor. I object to the question.

THE COURT: Pardon?

MR. BRILL: He has already answered it. He said the cost of goods sold as reflected on the return was likewise correctly reflected by the books and records.

MR. SILVERMAN: My question was as to the equipment rental expense which is another item on the return.

MR. BRILL: Which comes under the heading of cost of goods sold.

THE COURT: Is there a separate entry on the books for equipment and rental?

THE WITNESS: Yes, equipment repairs, equipment rental. Equipment rental appears in the cost of goods sold.

THE COURT: Is it separately identified?

A Well, it's a component part of the cost of goods sold.

THE COURT: But is it separately identified?

THE WITNESS: Yes.

THE COURT: Overruled.

Q What is your answer?

A Yes, it was in agreement.

Q Now, didyou conduct an audit of the books and records of Paterno & Sons, Inc.?

A I did.

Q And what type of audit did you conduct?

A In-depth audit.

Q Would you explain to the ladies and gentlemen of the jury what an in-depth audit entails?

A I have to verify income in considerable detail and you have to verify expenses in considerable detail and this may involve going to third parties.

Q What are third parties?

A Third parties can either be a customer or a supplier of the taxpayer.

Q During the period of December 1970 to April 1971, where were you assigned, sir?

A The examination of the corporate returns of Paterno & Sons.

Q And where did you physically conduct your examination?

A At the corporate offices at 204 City Island Avenue.

Q Approximately how many days a week during this period did you go to the offices of Paterno & Sons, Inc.?

A From two to three days a week.

Q What was the first area of your examination?

A Revocation of income.

Q And what procedures did you follow in order to verify the income?

A I checked the bank deposits to be cash receipts book.

Q And were they in total agreement?

A No.

Q Was there a discrepancy in the figures?

MR. BRILL: I object to this, if your Honor please. It's not within the scope of this indictment.

MR. SILVERMAN: Your Honor, if I may be heard.

MR. BRILL: Could we do this at the side bar?

THE COURT: Yes.

(At the side bar)

MR. SILVERMAN: Your Honor, the next two questions and answers of Mr. Rizzo will show that the reason they were not in agreement was because there were certain non-taxable amounts that were put in the bank accounts that the corporation was given credit for and that the result of his examination was that the income reported on the returns was the proper amount as reported

in the books. He just hasn't described the procedures he went through and if they did not balance and the reason why they did not balance and he will describe what a non-taxable amount of income is.

MR. BRILL: I think, your Honor, that that's confusing and I think all he needs to say is that he found that the income as reported was the correct income received as a result of his examination.

THE COURT: You ask him to skip the details.

MR. SILVERMAN: All right, I will do that, your Honor.

(In open court)

Q Mr. Rizzo, without telling us the procedures that you went through, what was the result of your examination of the income reported by Paterno & Sons, Inc.?

A Income was found to be -- the books income was found to be in agreement with that reported on the return.

Q What was the next area of your examination, Mr. Rizzo?

A Examine cancelled checks.

Q And what were they the cancelled checks of?

A Royal National Bank, the corporate bank.

Q And what period of time did your original

examination cover?

A. March, April and May of 1965.

Q. That would be the beginning of fiscal year ending 2/66?

A. That's correct.

Q. And what type of examination did you make with respect to these cancelled checks?

A. I examined the endorsements on the front -- on the back of the check and on the front of the check I looked for any bank cashier's stamp.

Q. Now, what markings did you look for on the front of the check?

A. Cashier's stamp.

Q. And what markings did you look for on the back or the reverse side of the check?

A. A deposit stamp.

Q. Did any of the checks which you examined have business accounts stamped on the back of the checks?

A. Yes.

Q. What percentage or approximately how many of these checks had business accounts stamped on the reverse side of the checks?

A. Most of them did.

MR. BRILL: That's objected to, if your Honor please.

THE COURT: On what ground?

MR. BRILL: On the ground that it doesn't make any difference in this suit or in any other case whether they had stamped on them or not. The issue is whether or not they were paid.

THE COURT: No, I will allow it.

Go ahead.

MR. SILVERMAN: I didn't hear your ruling, your Honor.

THE COURT: I overrule the objection.

Q Mr. Rizzo, would you answer the question?

A Most of them did.

Q Did any of the checks have a cashier's stamp with a date on the face of the checks?

A Yes.

Q Were any of these checks in excess of several hundred dollars?

A Yes.

Q How many?

A One.

Q What was the name of the payee on that check?

A John Aurrichio.

Q And what was the approximate amount of that check?

A $1500. I am sorry, if I recall it was $2000, in excess of $2000.

Q You say it was in excess of $2000?

A Excess of $2000.

Q After examining the check payable to John Aurrichio, what did you do?

A I proceeded to examine a few more months.

Q And what if anything did you find in the next few checks that you examined?

A I found additional checks to John Aurrichio plus some checks to an Arthur Lazravitch.

Q On the face of these checks that vou found was there anything on the face of the checks?

A Yes, there was a cashier's stamp. It showed-- a cashier's stamp.

Q And on the back of the checks, Mr. Rizzo, was there anything on these checks other than an endorsement?

A No.

Q Now, did you examine any other checks of Paterno & Sons, Inc.?

A Yes.

Q And what period did vou make vour next

examination?

A I covered all the fiscal vears, right up to fiscal year February '70.

Q Now, what did you find in relation to these checks, sir?

A I found additional checks cashed.

Q And to what payees were there checks with cashier's stamps on the face of the checks?

A Michael Catenzaro, Thomas Tuccella, and an Anthony Ferrotta.

Q Were there any other checks payable to John Aurrichio and John Lazravitch?

A Additional checks to John Aurrichio and John Lazravitch.

Q Of the five payees you mentioned, ofthe checks that you found, did any of these checks have a bank account on the back of the check?

A Yes.

Q And do you recall the name of the bank account on that check?

A Yes.

Q What was the name, sir?

A First Naional City Bank. And the endorsement was Vin Rao's Bar and Grill.

merl7

Q Was there an account number on that check?

A Yes, there was.

Q Now, during the years 1965 to 1970, were there any other checks payable to any payees other than these five payees that had cashier's stamps on the face of the check?

A Yes.

Q And what were the approximate amounts of these checks?

MR. BRILL: I am going to object to that, if your Honor please. He is now guessing, obviously.

THE COURT: Are you about to guess at this answer?

THE WITNESS: No, sir.

THE COURT: Overruled.

Q What were the approximate amounts of these checks?

A Several hundred dollars.

Q Were there any of these checks in excess of -- what were the approximate amounts of the checks payable to the five payees that you mentioned?

A They ranged from $1500 to $9000.

Q Mr. Rizzo, I'd like to show you these 48 checks and ask you if you recognize them.

Mr. Rizzo, in order to save time, have you seen those checks in my office before?

A Yes.

Q Did you help me prepare these exhibits?

A Yes.

Q And were these the checks that you found?

A Yes.

Q Mr. Rizzo, after examination of these checks, what was the cashier's stamp on the checks -- on these checks that were not endorsed by "Vin Rao"?

A It was the Royal National Bank at 149th Street and it had the letter -- it had a letter plus I believe what I know is a cashier's number, and it had the date.

Q Now, while you were at the offices of Paterno & Sons, Inc. conducting your examination and after you found these checks, did you have a conversation with the defendant George Denti?

A Yes.

Q And where did this conversation take place, sir?

A At 204 City Island Avenue, the corporate office.

Q In what part of the premises at that location?

A On the first floor.

Q And when did the converstaion take place, on what date, if you recall?

A I believe it was on April 30, 1971.

Q Now, on that date, what did you say to Mr. Denti and what did Mr. Denti say to you, sir?

A Well, first I asked him for copies of the cancelled checks back and front. I asked him for copies of the invoices, and then I asked him for a list, a current list of all these truckers, five truckers.

Q And did Mr. Denti ask you why you wanted this information?

A Yes. I told him since these checks were cashed, I wanted to verify the fact that these people picked up the income. This is part of our audit procedure.

Q Now, when you say, sir, picked up the income are you referring to on the Paterno & Sons account returns --

A No.

Q -- or on their respective returns?

A Their respective returns.

Q Now, after this conversation was over, what happened, sir?

A. I went upstairs and continued my examination.

Q. And when was the next time that you saw the defendant George Denti?

A. About a half hour later.

Q. And where did you see him, sir?

A. Downstairs.

Q. And did you have a conversation at that time?

A. I did.

Q. And what did you say to Mr. Denti and what did Mr. Denti say to you at that time?

A. Well, he gave me the list and he gave me copies -- he gave me a list which contained only three names and he gave me copies of cancelled checks and the invoices and I said to him, "George," I says, "There's only three names on this list. I have asked for five."

He said, "I will get you the two -- the two, at a later date."

Q Now what were the names of the -- what were the names on that list that you received?

A Michael Catenzaro, Anthony Ferrotta and a Thomas Tucella.

Q Mr. Rizzo, I show you Government's Exhibit 149 for identification and ask you if you recognize that exhibit?

A. Yes, I do.

Q. And what is that exhibit?

A. It's the sheet of paper that I got from George Denti.

Q. Now, at the time you received this sheet of paper from George Denti, was there any writing on it?

A. Yes, pencil writing.

Q. And subsequent to your receiving that piece of paper, did you put any writing on that paper?

A. Yes, I did.

Q. And what writing on that paper, sir, is in your handwriting?

A. The ink portion.

Q. And is there a date on thatportion?

A. Yes, that's my writing.

Q. What's the date?

A. 4/30/71.

Q. And when did you put the writing on that page?

A. That night.

MR. SILVERMAN: I would like to offer in evidence Government's Exhibit 149.

MR. ROSENTHAL: I have no objection.

MR. BRILL: I have none, your Honor.

(Government's Exhibit 149 was received in evidence)

Q Mr. Rizzo, after receiving Government's Exhibit 149, this list of the three truckers, what if anything didyou do on that date?

MR. BRILL: I object to the form of the question, your Honor.

THE COURT: I will allow it. Go ahead.

A I met with my supervisor at the post office at Eastchester and Gun Hill Road.

Q And what if anything did you do after you met him?

A I parked my car and he get in my car and we looked at a map of the Bronx.

Q A map of the Bronx?

A Yes.

Q And did you find on a map an Allerton Avenue?

A Yes.

Q Did you find on the map a Halsey Avenue?

A No.

Q Did you find on the map a Halsey Street?

A Yes, sir.

Q Mr. Rizzo,could you please read the three addresses from Government's Exhibit 149 in evidence, with

the names with them, please?

A. You want me to read them in rotation or --

Q. The first one.

A. Thomas Tuccella, 89-94 153th Street, Jamaica, New York.

Q. What is the second one?

A. Michael Catenzaro, 1167 Allerton Avenue, Bronx, New York 10469.

Anthony Ferrotta, 1855 Halsey Avenue, Bronx, New York.

Q. Now, after examining the map, Mr. Rizzo, what, if anything did you do?

A. We proceeded, the supervisor and I, proceeded to Allerton Avenue.

Q. And whereon Allerton Avenue did you go?

A. In the 1100 block.

Q. Were you able to locate the address 1167 Allerton Avenue?

A. No.

Q. What did you do next, sir?

A. I proceeded to 209 Halsey Street.

Q. Is that the Halsey Street you found on the Bronx map?

A. Yes, sir.

Q Where on Halsey Street did you go to?

A In the 2000 area, the 2000 numbered area.

Q Were you able to locate the address 1855 Halsey Street?

A No, sir, there was no such address.

Q Whatdid you do, Mr. Rizzo, after you went to the Halsey Street?

A I went to the various post offices covering those two streets.

Q And subsequent to going to these post offices where did you go?

A I went to Jamaica, New York.

Q Is that in Queens?

A In Queens.

Q Where did you go in Jamaica, Queens?

A To 153rd Street, in the 8900 block.

Q Were you able to find the address 89-94 153rd Street?

A There was no such address.

Q Now directing your attention to May 3, 1971, what did you do on that particular day, sir?

A I went to 800 East Jericho Turnpike.

Q What type of structure is located at that address?

A One-story structure.

Q Were the premises occupied or unoccupied?

A Occupied.

Q And what type of tenant occupied those premises?

A It was a shoe outlet.

Q And what did you do at that location?

A I went into the store and inquired.

Q Did you have a conversation in that store?

A I had a conversation at that particular address, yes.

Q After the conversation that you had at that location, where did you go, sir?

A I went to 800 West Jericho Turnpike.

Q What type of structure was located at that address?

A That was a two-story structure.

Q Were these premises occupied or unoccupied?

A Occupied.

Q And what type of tenant occupied those premises?

A A Saab auto agency.

Q Did you have a conversation with anyone at that address?

A Yes.

Q Where?

A In the Saab Auto Agency.

Q What did you do after you were at that address?

A I left, I got in my car and went to 479 Hempstead Turnpike.

Q Where is that?

A That's in Elmont.

Q And what type of structure is that at that address?

A Two-story structure.

Q Was that structure occupied or unoccupied?

A It was occupied.

Q And whattype of tenant was at that particular location?

A Well, there was an R. H. Brenner on the ground floor, tha's an income tax service.

Q And did you have a conversation with anyone at that place?

A I did.

Q And after the conversation, what if anything did you do at that location?

A I went to the mailbox.

Q Did you notice at that address any tenant

by the name of Arthur Lazravitch?

A No.

Q Now, after the April 30th date, April 30, 1971, when was the next time that you saw the defendant George Denti?

A On July 28, 1971.

Q Where?

A It was at the office of Internal Revenue at 120 Church Street.

Q Was anyone else present at that meeting?

A Yes.

Q Who was present?

A Special Agent Ayres and a recording secretary.

Q And what happened at that time?

A We questioned George Denti with respect to these checks and invoices.

Q Was this conversation transcribed or recorded onany machine?

A Yes, a stenotypist machine.

Q Now, at that particular time did you receive anything from Mr. Denti?

A Yes.

Q What did you receive?

A Copies -- I am sorry, these original checks and the original invoices.

Q Now I show you Government's Exhibits 1A through 47A with one or two missing and ask you if these are the documents you received from Mr. Denti?

A Yes.

Q Did you help prepare these exhibits, Mr. Rizzo?

A I did.

Q So you are familiar with them, is that correct?

A Yes.

Q During the next several months, between July -- subsequent to July 28, 1971, did you conduct any investigation or examination with respect to Paterno & Sons, Inc.?

A I made third-party inquiries.

Q Directing your attention to October 18, 1971, what if anything did you do on that particular day?

A I went up to Paterno & Sons at 204 City Island Avenue.

Q Did you go there alone, sir, or did you go there with someone else?

A I went there with Special Agent Ayres.

Q Did you meet anyone on that occasion?

A Yes.

Q Who did you meet?

A George Denti and Michael Paterno.

Q And did you have a conversation with them at thattime?

A I did.

MR. ROSENTHAL: What date was that?

MR. SILVERMAN: October 18, 1971.

Q I am sorry, Mr. Rizzo?

A I did.

Q And who did you have a conversation with?

A With George Denti and Michael Paterno.

Q And what was the nature of that conversation. what did you say to them and what did they say to you?

A Well, we wanted signatures -- we wanted handwriting of these particular truckers in their own handwriting.

Q Did Mr. Paterno and Mr. Denti give you samples of their handwriting?

A They did.

Q I show you Government's Exhibits for identification 146, 147 and 148 and ask you if you recognize them.

A I do.

Q And what are they, sir?

A They are samples in George Denti's handwriting of the five truckers.

MR. SILVERMAN: I would like to offer in evidence Government's Exhibits 146, 147 and 148.

MR. ROSENTHAL: No objection.

(Government's Exhibits 146, 147 and 148 were received in evidence)

Q I show you Government's Exhibits 151, 152, 153, 154 and 155 and ask you if you recognize them, Mr. Rizzo?

A I do.

Q And what are they, sir?

A They are -- these names of the five truckers were signed by Michael Paterno, in the handwriting of Michael Paterno.

MR. SILVERMAN: The government offers 151 through 155 in evidence.

MR. BRILL: I have no objection to the receptance in evidence of these, your Honor.

(Government's Exhibits 151 through 155 were received in evidence)

Q Mr. Rizzo, after vou conducted and finished your examination of the checks and the invoices and the

books and records of Paterno & Sons, Inc., did you prepare a summary of these payments and of these checks for the fiscal years in question?

A I did.

Q I show you Government's Exhibit 172 for identification and ask you if you recognize it.

A I do.

Q And what is it, sir?

A It's a summary of the various charges to each of these five truckers from the purchase book and the payments to these particular five truckers.

MR. BRILL: Would your Honor prefer that I hold my questions which would go to these summaries for cross-examination?

THE COURT: Well, if you will tell me your preference I will rule on it if it needs a ruling.

MR. BRILL: I think it would be easier and it would save time if we did it that way.

THE COURT: Do you object to the exhibit?

MR. BRILL: Subject to connection and my cross-examination, that's all, sir.

THE COURT: All right, it's received.

MR. BRILL: And subject to a motion to strike.

THE COURT: Okay.

(Government's Exhibit 172 was received in evidence)

MR. SILVERMAN: At this time with the Court's permission after receiving the Court's instructions I would like to give a copy of these to every other juror so they may follow Mr. Rizzo's testimony.

MR. BRILL: Well, as to that I think we should wait until the end of the cross-examination, your Honor.

THE COURT: No. You may do it.

MR. BRILL: Have they been corrected?

MR. SILVERMAN: Yes, they all have been corrected.

Q Mr. Rizzo, the lefthand column, as we are looking at it with the names, those are the names of payees of these checks, is that correct?

A That's correct.

Q What is the next column?

A It's the purchase book folio. That's the page in the purchase book where these were entered.

Q And what's the next date, Mr. Rizzo?

A That's the invoice date. This conforms to the invoice that were furnished.

Q And what is the next amount, Mr. Rizzo?

A That's the net amount of the invoice.

Q And the following column?

A That's the date that the check was issued in payment of that particular invoice.

Q Next column.

A That's the check number covering that payment.

Q And the last column?

A That's the actual payment of the check. That will conform to these checks.

Q For the fiscal year ending 2/28/66, what was the amount of money disbursed to a payee by the name of John Aurrichio?

A $12,691.62.

Q And what was the amount of money --

THE COURT: May I ask, please, the fifth check under Aurrichio has a date 3/31/65. The invoice date is 11/30/65. Is that an error?

A No, sir. The purchase leg of this particular schedule reflects the fiscal year. The check portion of this does not reflect the fiscal year. It just makes a comparison of how this particular invoice was paid, when it was paid.

THE COURT: But the dates indicate that the check was paid eight months before the date of the invoice?

THE WITNESS: No, that must be an error.

THE COURT: It looks that way to me.

A. It should be a '66 here.

Q. Lookat the check.

A. I will check that with the check.

I am sorry, that's 3/31/66. There is a correction on that.

THE COURT: May it be corrected in the exhibit in evidence, gentlemen?

MR. BRILL: Certainly, sir.

THE COURT: Okay.

Q. Mr. Rizzo, with respect to the fiscal year ended 2/28/66, what was the total amount of money paid to John Aurrichio and Arthur Lazravitch?

A. $18,907.30.

Q. For the next year, without going through all the payees, what is the total amount for the invoice net amount for that fiscal year?

A. $36,424.40.

Q. What is the total amount in the column that says check amount for that year?

A. $36,291.15.

Q. Mr. Rizzo, could you explain to the ladies and gentlemen of the jury why there is a discrepancy

between the checks and the invoice net amounts?

A There may be an adjustment or a correction of the bill.

MR. BRILL: That's objected to as speculative, your Honor.

THE COURT: Sustained. I will strike that out. If you know you may answer.

Q Do you know the reason for the difference in that particular year for the discrepancy between the two total figures?

A Yes, sir. There were adjustments made to the invoice.

Q Now, for the fiscal year ending 2/29/68 --

THE COURT: By the way, before you go on, still on the first page, I hate to be picking these nits, but the last invoice -- I am sorry, the third from the last invoice is dated 6/30/65, according to this summary, and the check date is 6/22/65.

Now, do these correctly reflect the invoice and checks?

THE WITNESS: I can't --

Q On the first page, Mr. Rizzo. What is the amount of check No. 6847 payable to Arthur Lazravitch.

THE COURT: Not the amount, the date.

Q What is the date on check 6847?

A 6/22 -- June 22, 1965.

THE COURT: And what is the date on the invoice?

THE WITNESS: 6/30/65. Yes, but let's see on. --

(Witness refers to exhibit)

Q Mr. Rizzo, the invoice date that is reflected in this column, is that the date on the invoice itself or the date of the entry in the book, in the purchase book?

A That would be the date, I believe, of the entry on the purchase book.

THE COURT: What's the date of the invoice which is purportedly listed on this chart, 172, that I have allowed in evidence?

MR. SILVERMAN: Your Honor, if I may assist the Court, that is check No. 13 an there is no invoice for that, so that is the amount that came from the book. That is his best estimate as to where thatinvoice was made.

A That was kept on the purchase book, your Honor.

THE COURT: All right, well, look, this is a chart that purports to summarize and set out things that

were found, now you tell me in the checks, the inovices and maybe in the books. And if that is what it purports to do, it's your obligation to see that it's done accurately, Mr. Silverman.

Q Mr. Rizzo, the first column that says purchase book folio, did you examine the pages that are listed in that column?

A I did.

Q Did you compare that column to the amountof the checks?

A Yes.

Q In cases where there were no invoices were the amounts of the checks, the amounts reflected on those purchase folio pages?

A Yes.

Q Now Mr. Rizzo, for the fiscal year ending 2-28-69 -- 1968?

A Yes.

Q -- what was the total amount of money received from John Aurrichio and Michael Catenzaro and Anthony Ferrotta -- payable to them, I mean?

A The checks, the amount paid?

Q Yes.

A $55,667.56.

Q I believe you are looking at 1969, Mr. Rizzo.

A 1968 -- I am looking at 1968.

Q I am sorry, my page is out of order.

For the fiscal year--

MR. BRILL: May I have that amount, please?

(Read.)

Q For the fiscal year ending 2-28-69, what was the total amount of money paid to the four truckers -- Catenzaro -- the four payees -- Catenzaro, Ferrotta, Lazravitch and Tuccella?

A $42,848.32.

THE COURT: Mine, too, is a little mixed up. In collating these pages, this reference to fiscal year 2-28-69 intervenes between the two pages for 2-29-68, and that may be the cause of the confusion.

Again, if you are going to give the jury exhibits to clarify, let us try to see that they clarify.

MR.SILVERMAN: Yes, your Honor.

THE COURT: Ladies and gentlemen, it may be true on your copies, too, but at any event, apparently on mine and defense counsel's there is an intervening page for 1969, which I hope straightens it out.

Okay.

Q Mr. Rizzo, for the fiscal year ending 2-28-69 what is the total amount of the invoice net amount in that column for that year?

A $11,941.46.

Q I am looking at 2-28-69.

A 2-28-69?

Q 1969. We are finished with 1968.

A I went to 1969 before -- I thought we did that.

MR. SILVERMAN: I am sorry, your Honor.

THE WITNESS: Correction.

Q Will you please read the amount, Mr. Rizzo, on that column?

A $40,394.86.

Q Do you know the reason for the discrepancy between the figure and that column with the amount listed, as to the total check amount paid?

A Well, they are payments lapping over.

Q Do you know?

A Yes.

Q What is the reason?

A 9-16-68, check No. 583 is in payment of an invoice for a prior year.

Q In other words, Mr. Rizzo, the amounts listed in the invoice net amount, are they listed on an accrual basis or a cash basis?

A On the check list, the check payments?

Q No, the amount -- the invoice net amount, is that on the accrual basis or the cash basis?

MR. BRILL: I object to this, if your Honor please. He has already testified that these books were kept as usual, for corporations, on an accrual basis.

THE COURT: Why are you objecting?

MR.BRILL: In this case I am objecting because this question suggests that there may have been a change in the method of keeping the books.

THE COURT: I did not understand him to suggest

anything of the kind.

Is that what you are suggesting?

MR.SILVERMAN: No.

THE COURT: No; overruled.

A Will you repeat that again, please?

Q Are the figures listed in the invoices net amount column on an accrual basis, Mr. Rizzo?

A Yes.

Q The checks that are payable in the last column, are they listed as per date or by fiscal year?

A Per date.

Q Now turning to the last year, Mr. Rizzo, 2-28-70 --

MR. BRILL: Your Honor, I am going to ask that these be withdrawn because they are confusing. These are not listed on the basis of the fiscal year, in accordance with the last answer. He has now modified, perhaps, for his own convenience the bookkeeping system.

THE COURT: I do not see that he has modified it. The jury will understand that this exhibit, No. 172, purports only to embody and summarize things that are elsewhere in evidence, in the books, in the invoices and in the checks.

Insofar as there may seem to be discrepancies among those various documents, those can be brought out on

direct or on cross examination.

I do not believe, judging from the way things have been received without objection, that the real focus on any genuine dispute lies there anyhow, the figures among the various papers seem to be an agreed situation, and where there are discrepancies in numbers I will allow Mr. Silverman to interrogate, with the asserted purpose of explaining those seeming discrepancies, and I will likewise allow defense counsel to cross examine on that.

MR. BRILL: Thank you.

THE COURT: Go ahead.

Q Mr. Rizzo, just to make one thing clear, the checks that are listed on the last column of all these pages, do they correspond to the invoice amount listed in the third column?

A No, not per --

Q In some instances they do?

A They would and they would not.

Q Could you explain to the jury why the check amounts would not correspond to the invoice amounts?

A Because there are certain adjustments made to the invoices.

Q Mr. Rizzo, turning to the last year, 1970, the fiscal year ending 2-28-70, what is the total amount of

moneys dispersed to the payees Catenzaro, Ferrotta and Tuccella?

A $12,154 and no cents.

Q What is the invoice net amount?

A $11,941.46.

Q Mr. Rizzo, in these columns, the column invoice net amount and the check amount, which is the amount that is used for the preparation of the tax returns?

A The purchase book amount, which is the invoice net amount.

Q Were those amounts that were listed on the tax returns in question?

A That is correct.

Q Mr. Rizzo, during the course of your examination of the books and records of Paterno & Sons, Inc., did you have an opportunity to examine the particular book that listed the purchases or the expenses of Paterno & Sons, Inc.?

A Yes.

Q What is the name of that book?

A Purchase book.

Q And didyou examine that book to determine what expenses were paid for trucking expenses?

A Yes, sir.

Q Mr. Rizzo, I show you Government's Exhibit 173 for

identification, and I ask you if you recognize it (handing).

A I do.

Q What is Government's Exhibit 173?

A It is a list of the various trucking companies which were recorded in the purchase book.

Q Mr. Rizzo, so that it is absolutely clear, do you know if in fact any of the truckers listed on this page actually performed or did not perform services for Paterno & Sons, Inc.?

MR. BRIL: How would he know that, Judge?

THE COURT: Well, if he does not know he will say so -- if you will give him a chance to say that.

Do you know?

THE WITNESS: Well, I reviewed the invoices --

THE COURT: Do you know -- yes or no?

THE WITNESS: No, sir.

THE COURT: He agrees with you, Mr. Brill. He does not know.

MR. BRILL: Thank you.

THE COURT: Next question.

Q Mr. Rizzo, the truckers that are listed in the first half of the exhibit in front of you, where did you get those payees' names from?

A From the purchase book.

Q And what part of the purchase book or what section of the purchase book do these payees refer to -- what type of expenses?

A Equipment rental expense.

Q So these are payments made as listed in the purchase book for equipment rental expenses?

A They were charges to the purchase book for equipment rental.

Q Now for the fiscal year ending 2-28-66 what was the total amount of the equipment rental expenses listed in the purchase book?

A $96,112 and no cents.

Q And what was the total amount of equipment rental expenses listed on the tax return?

A $96,112 and no cents.

MR. SILVERMAN: At this time, your Honor, we would offer in evidence Government's Exhibit 173.

THE COURT: Is there any objection?

MR. BRILL: Subject to the same objection I made earlier with respect to Exhibit 172, your Honor, and in order to save time I will withhold my objection until cross examination and my motion.

THE COURT: All right, it is received.

(Government's Exhibit 173 was received in

evidence.)

MR. SILVERMAN: May I give one copy of this to every other juror?

THE COURT: Yes.

Let me ask you -- I assume you still have some further direct examination, Mr. Silverman?

MR. SILVERMAN: I would say no more than 15 minutes, your Honor.

THE COURT: I think we will give the jury a 10-minute recess now.

(Recess.)

MR. SILVERMAN: Your Honor, may I at this time give the jurors a copy of this summary?

THE COURT: Yes.

MR. SILVERMAN: Thank you.

(Mr. Silverman hands to the jury.)

BY MR. SILVERMAN:

Q Mr. Rizzo, the names of the payees listed in the left-hand column, what type of expenses were those payees listed under?

A Equipment rental expense.

Q And what was the total amount of these payees for the year 2-28-66?

A All the payees?

Q The payees on the left-hand column, on the top half of the page.

A $29,374.

Q What was the total amount during that same fiscal year that was paid to the 5 names -- Aurrichio, Catenzaro, Ferrotta, Lazravitch and Tuccella?

A $18,907.

Q Now going to the next page, the $38,000 figure, is that the total of those payees for that fiscal year, excluding payments made to the five payees listed?

A Yes.

Q Referring specifically to the fiscal year 2-28-69, the fourth column, what was the total amount of expenses, equipment rental expenses listed on the tax return?

A $156,630.

Q And what was the total equipment rental expense listed in the books and records of Paterno & Sons, Inc.?

A $156,630.

Q What was the total amount payable during that fiscal year to the five payees?

A $40,395.

Q What was the total amount payable to all the other payees listed in that column?

A $39,274.

Q Referring specifically to the other named payees, what was the largest amount payable in that year to any one of those payees?

A There is one item to La Spina, $8,711.

Q And what was the amount, the largest amount payable to any of the five?

A $11,715 to Anthony Ferrotta.

Q What was the largest amount in that year?

A Oh, I m sorry, Thomas Tuccella, $14,991.

Q Is it approximately accurate to state that one quarter of the equipment rental expense for that year, 2-28-69, were payable to the five payees listed at the bottom of the page?

MR. BRILL: I have an objection to that.

THE COURT: Yes?

MR. BRILL: I do not think this is a time to approximate percentages.

THE COURT: Well, it is such a small matter, I will allow it.

Q What is the approximate amount?

A The approximate amount? 25 per cent of the total rental expense.

Q In the year 1969 was the amount payable to these

five payees greater than or less than the amount payable to all the other payees listed in the same column?

MR. BRILL: That certainly is objectionable, your Honor. The document is in evidence, subject to the reservations that have been made, and the jury can see it for itself.

THE COURT: Yes, I think the jury can see that.

MR. SILVERMAN: All right.

Q Mr. Rizzo, have you ever met the accountant of Paterno & Sons, Inc.?

A Yes.

Q What is his name?

MR. BRILL: Could we have your Honor's attention at a side bar, please?

THE COURT: Not yet, no.

MR. BRILL: Well, I am anticipating something.

THE COURT: Let us see what happens.

(Question read.)

A Jacob Bressler.

Q When was the last time that you met Mr. Bressler?

A january 10th of this year.

Q And where did you meet him, sir?

A At your office, at 26 Federal Plaza, Room 1307.

Q And who was present at that particular time?

A You were, I was and Mr. Bressler.

Q Did you have a conversation with Mr. Bressler at that time?

A I did.

Q And did this conversation concern the existence or non-existence of truckers?

MR. BRILL: That is objected to, if your Honor please.

THE COURT: All right, come to the side bar.

(At the side bar.)

MR. BRILL: I take it that this is offered to contradict Mr. Bressler. I object to it, because I do not believe that it is proper to contradict by this witness another witness offered by the prosecution. I am cognizant of the fact that in response to the prosecutor's application this morning your Honor did say that you consider Mr. Bressler to be a hostile witness, but notwithstanding that, I object to this, because I do not think that this is a proper way to impeach Mr. Bressler.

MR. ROSENTHAL: I have a further objection, your Honor, that anything that Mr. Bressler might have said would not be binding upon my client, George Denti. He was not Denti's accountant or agent. Denti was merely an employee of the corporation.

MR. BRILL: Implicit in my objection is the fact that what Bressler said in 1974 under no circumstances could be binding upon either of my clients.

THE COURT: That is what Mr. Rosenthal just said, and I think that is right.

MR. SILVERMAN: If I may be heard, your Honor. Mr. Bressler was going to testify to a conversation --

THE COURT: Mr. Rizzo.

MR. SILVERMAN: Mr. Rizzo -- to a conversation that Mr. Bressler had with both defendants at the same time -- both Denti and Paterno were present at this conversation.

THE COURT: When Bressler was present?

MR. SILVERMAN: Yes, as to a conversation that Mr. Bressler had with Mr. Denti and Mr. Paterno.

THE COURT: But Rizzo wasnot there.

MR. SILVERMAN: But,your Honor, once, I believe, awitness is declared hostile it is proper to produce a witness to testify to a prior inconsistent statement by that witness.

THE COURT: No, I am not going to allow it, because the jury is obviously going to be asked to use this evidence in chief, and that is the point that Mr. Rosenthal made. I think that the net effect of your enterprise here would end in the result of using admissions by Bressler after the

event as if they were admissions by these two defendants, and I am not going to allow that.

MR. SILVERMAN: If I may be heard, your Honor.

If Mr. Bressler testified as to the conversation that he had with Denti and Paterno it would have been proper.

THE COURT: It might, but it is evidence in chief because the admission -- you are admitting yourself that this witness cannot testify to those admissions. He can only testify to what Bressler said about those admissions, so youare trying to get it in as impeachment and for the purposes of impeachment, and I would probably let you do it but it is going to be serving the purpose that you hope to achieve through Bressler himself, and that I am not going to allow.

MR. SILVERMAN: All right.

(In open court.)

MR SILVERMAN: Thank you, Mr. Rizzo, I have no further questions. I am sure Mr. Brill has some questions.

MR.BRILL: Shall I proceed, your Honor?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. BRILL:

Q On direct examination, Mr. Rizzo, you told us about your activities for the period which began, I think you said,

in December of 1970 until some time in April of 1971; is that correct?

A Yes, sir.

Q Now in connection with each day and date on which you worked as an Internal Revenue agent on this in-depth audit, did you make a report of your activity?

A I did, sir.

Q Did you make a report of your activity on April 30th for example?

A Yes.

Q Did you make a report of your activity on the date that you said you next saw Mr. Denti on -- and I think you said Mr. Paterno as well -- on July 28th?

MR. SILVERMAN: Objection, your Honor. He did not testify that he saw Mr. Paterno on July 28th.

MR.BRILL: I will withdraw that. I am in error. My notes show that he only spoke to Mr. Denti.

I will reframe the question, with your Honor's permission.

Q Did you make an activity report of the conversation that you had on July 28, 1971?

A I can't recall it. I would have to refer to my activity sheets.

Q Do you have those with you?

A I don't have them here,no.

MR. BRILL: May he look at them during the luncheon recess, your Honor, and I will go on to something else in the meantime?

THE COURT: Have you looked at them, Mr. Brill?

MR.BRILL: No, sir -- I only have one, and I do not think -- the only one furnished to me consisted of three pages.

MR. SILVERMAN: Your Honor, is Mr. Brill referring to third-party inquiry activity sheets or the daily activity sheets of the agent? There are two separate types of documents.

MR. BRILL: I am talking about daily activity reports.

THE COURT: Are they available for Mr. Rizzo to look at?

MR. SILVERMAN: I have copies of them, your Honor. I will show them my copies and ask him if these are copies of the originals.

THE COURT: All right,why don't we do that, Mr. Brill.

MR. BRILL: I would just as soon go onto something else, Judge, and save the time, so I can pick it up during the luncheon recess and continue after lunch,

in the interests of saving time.

THE COURT: All right, if you think it will save time, let us do that.

MR. BRILL: I am going to try to save time.

BY MR. BRILL:

Q By the way, Mr. Rizzo, during this entire period from January 1970 into approximately July of 1971 did there come any time when anyone connected with Paterno & Sons, Inc. made a suggestion to you that you considered improper?

MR. SILVERMAN: Objection, your Honor, on two grounds:

No. 1, he has not testified to being in the investigation in January of 1970.

THE COURT: I think that is right, but then what is your other ground?

MR.BRILL: December, I think he said, I am sorry.

MR.SILVERMAN: The form of the question.

THE COURT: The form of the question?

MR.SILVERMAN: As to form.

THE COURT: Yes, sustained.

Q At any time since you first went to Paterno & Sons, Inc.'s offices, up to today, has anyone connected with Paterno & Sons, Inc., whether it be Michael Paterno or anybody else, made any suggestion to you with respect to what you should or should not do in your official capacity?

MR.SILVERMAN: Objection, your Honor.

A No, sir.

MR. SILVERMAN: He is not charged with any improper conduct other than the income tax returns.

THE COURT: If counsel stands up wait until I rule on the question.

I will overrule it.

The answer is no?

THE WITNESS: Yes, your Honor.

Q Is it true that on every occasion that you went to the offices of Paterno & Sons, Inc. you were furnished by personnel of that corporated body any records that you requested for your in-depth examination?

A Yes, sir.

Q Is it also true, Mr. Rizzo, that you were given free access to the safe in which the records of the company were kept?

A When I asked for, sir, if I may answer that, I have asked for the records, they said they were in the safe and

the safe was open, and I was able to get the cash disbursements book and purchase journal, yes, sir.

Q So that in fact, you were given free access to the safe to look at whatever records there were in the safe, isn't that correct?

A Yes, sir.

Q And that condition existed throughout the entire period of your visitation from the date when you first went there to the date that you were last there, isn't that so?

A Yes, sir.

Q At no time did Mr. Michael Paterno or even George Denti refuse to furnish you with any records, isn't that correct?

A That is correct.

Q And when you examined in the course of your in-depth audit for samples of their handwriting which had been received here in evidence, for example, with respect to Michael Paterno, Exhibits 154, 155, 153, 152 and 151, Mr. Paterno furnished you with those handwriting samples?

A He did.

Q And when you asked for samples from Denti, Exhibits 146, 147 and 148, he likewise furnished those?

A That is correct.

Q Now, on April 30, 1971, you told us that you asked Mr. Denti to write out the names of three of the persons to whom -- who were the payees on some of these checks, namely Tuccella, Catenzaro and Ferrotta and he did that at your request?

A That is not correct.

Q What is it?

A I asked for a list of the truckers and their current addresses?

Q And did he give it to you?

A I didn't ask him -- if I may interject this -- I didn't ask him for in his own handwriting, I asked him for a list. Yes, sir.

Q All right.

And then did he give you a list?

A He did.

Q And was it in his own handwriting?

A I believe it was. He gave it to me, I requested it from him, yes.

Q And didn't you then underneath the list which he gave you write "Given by George Denty and written by George Denti, R.A. Rizzo."?

A That is correct.

Q And that is Exhibit 149?

A That is correct.

Q That is in your handwriting?

A That is.

Q And the matter which appears above it is in the handwriting of Mr. Denty?

A He gave it to me.

Q Yes. Did you see him write it?

A No, sir.

Q Did he say that he wrote it?

A No, sir.

Q Nevertheless you wrote "and written by George Denti" at the bottom of that page, didn't you?

A Yes, sir.

Q Although you didn't know who wrote it?

A I didn't see him write it, no.

Q And you didn't know who wrote it?

A No, sir.

Q Now, in the margin to the left -- to the right -- under the date 4-30-71, in ink, that's in your handwriting, isn't it?

A Yes, sir.

Q There appear against each of the three names listed some letters?

A That is correct.

Q What are those letters?

A N/G.

Q And what do those letters mean?

A No good.

Q And is that what you wrote with respect to each of those?

A That is correct.

Q And that's what you wrote on the day that you got this document, Exhibit 149?

A That's correct.

Q When you and your supervisor went around to check these addresses,one in Jamaica and two in the Bronx?

A He assisted me --

Q Is that correct?

A No, it is not. Two of the addresses he helped me check, the Catenzaro and Ferrotta, the Thomas Tuccella I checked myself.

Q Okay. Did you do it all on the 30th of April, 1971?

A Yes, sir.

Q Now, up to that time did you ever suggest to Mr. Paterno or Mr. Denti that these three persons whose names are listed here against which you wrote the letters N/G were non-existent?

A No, sir.

Q Up to that time had either of those gentlemen ever said to you that there were no such truckers?

A No, sir.

Q And these letters N/G, again, mean what, sir?

A No good. Not at the address.

Q Not at the address?

MR. BRILL: May I pass this to the jury, your Honor?

THE COURT: Sure.

(Exhibit handed to jury.)

(Defendants' Exhibit A was marked for identification.)

MR.BRILL: Your Honor, this is a copy which was furnished to me by Mr. Silverman. May we eventually, when we have made another copy from the original, substitute the original for it?

MR. SILVERMAN: Your Honor, I will stipulate that those were copies that were made by our office as part of the 3500 material and they are true and accurate copies of the originals.

MR. BRILL: Yes, but we will need the original to make another set. Mr. Rosenthal never got a set of these. There was some difficulty about the reproduction and we

are going to get a set by agreement, another set, some time today, hopefully, and what I would like to do, with your Honor's permission, is to rephrase this copy with the original, which is more legible and which is the original document.

MR. SILVERMAN: No objection, your Honor.

MR. BRILL: Good; thank you, sir.

BY MR. BRILL:

Q Mr. Rizzo, I show you Exhibit A for identification and ask you to tell us when the original of this document was prepared by you?

A There are 70 pages. Should I go through all of them?

Q Pardon?

A There are 70 pages here.

Q Yes, whatever they are.

A All but one.

Q And which one is that?

A That is the table of contents.

MR. BRILL: All right, may we withdraw that or should it be marked as a separate document?

Q For your convenience, does that document help you?

A Yes, it is a table of contents of what is in this

particular file.

Q All right.

Who prepared that?

A One of the aides-- one of the special agents. He assisted me in just making this up.

Q Who is that?

A Dennis -- what is his last name again? This gentleman here.

Q The gentleman standing in the back of the courtroom?

MR.SILVERMAN: Yes. His name is Dennis Johnson.

Q He prepared this one sheet which bears the numbers 3539 and it is an index of the documents, the 70 pages which are -- which make up Exhibit A for identification, sir?

A I'd like to clarify that. He --

Q Is that correct?

A I -- he prepared -- yes, at my -- with me.

Q All right, you supervised his preparation of it?

A Yes.

Q Now, the contents of these 70 pages,are they all in your handwriting?

A That is correct.

Q And from what source or sources did you obtain the information contained in these 70 pages?

A From the purchase journal, or from the invoice.

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Q Anyplace else?

A No.

Q You are speaking of the records of Paterno & Sons, Inc.?

A That's correct.

Q And you numbered each one of these pages, didn't you?

A I did.

Q Actually the last one bears the number 71, doesn't it?

A I think there is a page after that too. Yes, sir.

Q Is that correct?

A That's correct.

Q Now, when did you prepare Exhibit A for identification?

A Sometime the latter part of 1971. I have a date. I should have a date.

Q The latter part of 1971?

A In -- September 29 I started on the analysis. September 29 of 1971.

Q And where did you make this analysis?

A At my office.

Q And from what did you make it?

A A copy of the purchase book.

Q Which had been furnished to you?

A By Mr. Denti.

Q Did you go to the offices of Paterno & Sons?

A I did.

Q For the purposes of obtaining copies of the books and records or some books and records of that company?

A I did.

Q Did you do that prior to the date on which this appears, September 29, 1971?

A Yes.

Q Actually, did you go there alone on that date?

A Beg pardon?

Q Did you go there alone that date?

A No, sir.

Q Who was with you?

A Special Agent Walter Ayres.

Q Is he the gentleman sitting next to Mr. Silverman?

A That's correct.

Q Is he what is known as the case agent in this case?

A I never heard it by that term.

Q In all the years you have been in the Internal Revnue Service as an Internal Revenue agent, have you never heard the expression "case agent"?

A I heard the name of "cooperating agent" but not"case agent."

Q Were you working under Mr. Ayres' direction?

A From when? What date?

Q Wereyou at any time during the course of your activity in connection with the in-depth investigation that you made, from the time of your assignment to the time that you completed the work that you were assigned to do, were you working under the direction of Mr. Ayres?

A I was not.

Q Was there any time during that period when you were working with Mr. Ayres?

A No.

THE COURT: What do you mean by "that period;" from when to when?

Q From December 1970 which I think he said was the date when he first went there.

THE COURT: To when?

MR. BRILL: To the time when he completed that, your Honor, and I will ask him the last date on

which he completed his activity in respect of his in-depth audit?

A No.

Q Could you give us the date, please?

A That was April 30, was the last time I was up at his office, Paterno's office.

THE COURT: I have a feeling that if you go beyond April 30, 1971, you may get other information. That's my only point, Mr. Brill.

MR. SILVERMAN: My only question is as to the last question, was it as to the in-depth audit that he was at that particular location or was it for some other reason. I don't understand the general context of the question.

THE COURT: Well, look, was there ever a time from December 30, 1970 until today when you worked with or under the supervision of Mr. Ayres in connection with these taxpayers?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. BRILL:

Q When did that begin?

A In May, late May, 1971.

Q That's the first contact you had with Mr. Ayres

about this case?

A Yes, sir.

Q Were you and Mr. Ayres working out of the same office during the period from December '70 until late May 1971?

A Yes.

Q And was that the office that you described as being the same office where Mr. Silverman's office is located on the 13th floor of 26 Federal Plaza?

A No, sir.

Q Was that another address that you were both in the same office?

A At 120 Church Street.

Q And you were both in the same office?

A That's correct.

Q Did you talk with Mr. Ayres or any other special agent about your activities in respect of the audit you were conducting prior to the date that you say, late May 1971, about this case?

A I have to answer that by -- he was aware that I was going into Paterno & Sons, yes.

Q Had you talked to him about it?

A Not about the examination, no.

Q Can you tell us the time when to your knowledge

Mr. Ayres first became aware of your activities in respect to this case?

MR. SILVERMAN: Your Honor, at this time I would ask for a side bar conference.

THE COURT: All right.

(At the side bar)

MR. SILVERMAN: Your Honor, Mr. Brill at this time is pursuing a time period when Mr. Rizzo was investigating other employees of Paterno & Sons, Inc. These employees of Paterno & Sons, Inc. were the targets of an investigation prior to his investigation or the examination of Paterno & Sons, Inc. That is the reason why Mr. Ayres was aware of Mr. Rizzo's presence at those places. If Mr. Brill wants to get into that area which would be extremely prejudicial to these defendants as to the names of those individuals and to the reasons why he was up there, I will be more than happy to pursue it on redirect, but I purposely avoided discussing those matters in any way because it would be extremely prejudicial to the defendants in this matter.

MR. BRILL: I don't intend, your Honor, to go into any matters affecting any other persons who may or may not have been the subject of investigation. I understand from what this gentleman, this witness has

told us, that he began an in-depth audit of Paterno & Sons, Inc. and was investigating its returns for the fiscal years which he has described in his direct testimony. In those circumstances, without going into collateral or extraneous matters, I am addressing these questions as to whether he had contact in connection with that, since he described it as an in-depth audit of the corporate entity, rather than with respect to any of its employees or other persons.

THE COURT: Well, the fact remains there are first of all ambiguities and secondly obvious dangers in what you are doing. The ambiguity that is beginning to be apparent to me is from your constant reference to this term of art, "in-depth audit." It's clear he abandoned that on April '71. It's also clear he didn't hear the last of Paterno on that date. That's one ambiguity problem.

Then a special agent comes into the case and we all know that when a special agent comes into a case it is because somebody sniffs criminal possibilities, and you are asking him to thread his way among the criminal possibilities related to the Paterno enterprises, and Mr. Silverman quite properly says to you, you are doing that at your peril.

He is trying to give you, I believe, full and accurate answers, and I think something is going to tumble out and you and Mr. Rosenthal had better be aware of that and agree that it's worth the candle. It doesn't seem to me to be a useful cross-examination at all, this business of when did you and Ayres start snooping.

But you know more about this than I do, Mr. Brill. Mr. Silverman has done everything so far as I can see that he is required to do to protect both his record and your clients. You take it from there. If the door gets opened after this cautionary observation by Mr. Silverman, I am not going to leave loose threads hanging. I am going to let Mr. Silverman go into those things.

MR. BRILL: I understand. But I didn't introduce the term ofart "in-depth."

THE COURT: No, but now that you have heard it you know what it is, and he means to April 30 up to this point Ayres is not in the picture. Ayres comes into the picture later. If I misunderstood you, go ahead and clarify it for me and the jury.

What I want to emphasize is what Mr. Silverman got us here for. If something comes out that is responsive

to your quetions in my judgment, I am not going to blow up this trial on account of it.

MR. BRILL: All right.

THE COURT: Have that in mind.

MR. SILVERMAN: I would like to state for the record, your Honor, the first time Mr. Ayres met either one of these defendants was on July 28, 1971 at the question and answer session at which Mr. Denti appeared. He at no time prior to that went to the offices of Paterno & Sons, Inc. or was involved in the examination of this matter. The examinations were being conducted at the time prior was solely done by Mr. Rizzo with Mr. Ayres' knowledge.

THE COURT: Okay, well, Mr. Brill doesn't have to accept your representation, though he may make use of it. I think we have given him everything he is entitled to have.

MR. BRILL: Could we have just one thing further, Judge, and then I am going to ask your Honor if it's an appropriate time to recess for lunch because of the restaurant problems.

THE COURT: Well, let's do that now, then.

(In open court)

THE COURT: It has been suggested that life being as hard as it is, and the weather being what it is, we have an extra five minutes for lunch and I have approved that request, so why don't you suspend now and please come back at 2:15 and we will finish this discussion inyour absence.

(Jury left courtroom)

THE COURT: All right, let's all sit tight, gentlemen. We will finish our discussion before we go to lunch.

What was this other thing?

MR. BRILL: The other representation that I would ask for, Judge, and I think that could probably be the last one that is available to me, that the assignment of Mr. Rizzo and Mr. Ayres during the period involved here was to that agency which occupies the premises on the 13th floor at 26 Federal Plaza known as the Joint Strike Force of the Department of Justice.

MR. SILVERMAN: Your Honor, in the offices of the Joint Strike Force are representatives from every federal law enforcement agency and each one of those representatives being one or two people has backup personnel that work on investigations being conducted by our office at other offices all around the country.

These two agents, the revenue agent who began the investigation prior to the Strike Force had any knowledge of Paterno & Sons, Inc., and the special agent, were assigned much prior to this office becoming involved in the investigation. It wasonly after they formed a conclusion and had a recommendation that our office became involved.

So it's a fact that there are Internal Revenue Service personnel in our Strike Force but these individuals are not assigned to our Strike Force.

MR. BRILL: I am not sure that I quite understood, whether they worked with the Strike Force prior to the commencement of this particular audit. That's the thrust of what I am trying to find out.

THE COURT: I don't know. What is the relevance of that?

MR. BRILL: The relevancy, your Honor, deals with several aspects of it, your Honor will recall that among the pretrial motions, we raised an issue with respect to the administratige due process rights.

THE COURT: There is almost nothing you have ever uttered, Mr. Brill, that I forget, but occasionally I temporarily lose sight of it. I don't recall what you

are talking about.

MR. SILVERMAN: I may be able to clarify the situation. Your Honor, there are agents assigned to the Internal Revenue Service whose functions were to investigate certain people. They were in the process of investigating the tax returns of those people. Those people were employees of Paterno & Sons, Inc.

In the course of their examination of these people, Agent Rizzo discovered these checks. At that point, after they checked out the addresses, Special Agent Ayres was brought into the picture. Because these agents were assigned to a partiuclar group back at Internal Revenue, the case was assigned for prosecution not at the U. S. Attorney's office, but at the Strike Force office because of jurisdictional reasons. But they had not --

THE COURT: I still don't understand. What is it you are getting at, Mr. Brill?

MR. BRILL: I am trying to find out whether it was a criminal investigation from its outset.

THE COURT: Why? What's the difference?

MR. BRILL: Well, there may be several differences.

THE COURT: Well, tell me one that makes a

difference to the jury.

MR. BRILL: One, it's a matter of law and I think I have to establish the facts in order to properly present the question of law.

THE COURT: If it's not a jury question I am not going to let you develop it on the jury record.

MR. BRILL: It's not a jury question.

THE COURT: Then you should develop it at some other time, some other place in some other way. You are not going to bring out before the jury things that are irrelevant to the issues before the jury.

Now, you have had ample time for pretrial explorations. If there was a requirement of an evidentiary hearing in support of any motion you know that I would grant that and make time for it. But we are not going to do it in front of the jury, and if that's what this is all about --

MR. BRILL: Yes, sir, it is.

THE COURT: -- you ought to stop it.

MR. BRILL: Okay.

May I say this, Judge, in clarification of a position I am urging. It was my impression when I read your Honor's memorandum disposing of the motions that there wasn't anything that had been presented that

would require a pretrial hearing and I could have been in error about that. There may come a time, I think in order to complete this record, when we should have a hearing in the absence of the jury with respect to this particular issue.

THE COURT: That may be, and I don't know what I wrote, Mr. Brill. I remember your stuff better than mine, but I don't keep any of it in my head. If you made out a case for an evidentiary hearing and I didn't grant it, I made an error. I don't remember that.

If you didn't make out a case for an evidentiary hearing and I didn't grant one, then we are even. That's all I can tell you.

Now, if you have at any time applied for one, the ruling was whatever it was. I still don't know what evidentiary hearing you think you are entitled to, but I am not going to take time in front of the jury and you are going to have to make your record in a proper way at the proper time.

MR. BRILL: Very good, sir.

THE COURT: 2:15.

MR. BRILL: One thing more. Will the prosecutor be admonished not to talk to the witness while he is under cross -- or not "admonished," that's the

wrong word.

MR. SILVERMAN: I have already instructed the witness not to speak to me, your Honor, until he has finished with his examination. The only thing I spoke to him about was scheduling of certain witnesses, to tell them not to come in rather than have them sitting here.

THE COURT: Okay.

(Luncheon recess)

AFTERNOON SESSION

2:15 p.m.

(In open court; jury present.)

A N T H O N Y J. R I Z Z O, resumed.

THE COURT: Okay, Mr. Brill.

CROSS EXAMINATION CONTINUED

BY MR. BRILL:

Q I think you told us, Mr. Rizzo, that some time in September you and Mr. Ayres went up to the premises of Paterno & Sons, Inc. and requested copies of the purchase book, is that right?

MR.SILVERMAN: Objection, your Honor. I don't believe he testified to that.

THE COURT: Why don't you ask him questions, Mr. Brill.

MR. BRILL: All right.

Q Did you go to the offices of Paterno & Sons, Inc. and ask forany of its books and records and ask to be permitted to make copies of them?

A Yes, sir.

Q When did you do that?

A This was, I think, on September 15th or somewhere

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around that date.

Q Of what year, sir?

A 1971.

Q Now, at that time, what books and records did you get of Paterno & Sons, Inc.?

A I got copies of the cash receipts journal and copies of the purchase journal.

Q Which were made while you and another agent were present?

A That is correct.

Q Anything else?

A I requested copies of other invoices, yes.

Q Did you get them?

A Yes.

Q Now, did you then prepare Exhibit A, 71 sheets, from the records of Paterno & Sons, Inc., copies of which you requested and were furnished?

A I prepared this analysis for this summary from the purchase book.

Q When you say this analysis, are you speaking of a particular sheet?

A Well, this is a summary of all the five years.

Q I am talking about the whole document, the 71 pages.

A I copied that from the purchase journal.

Q In other words, this document, now Exhibit A for identification, is a copy of the purchase journal of Paterno & Sons, Inc.?

A That is correct.

Q And does it also reflect cash disbursements?

A No, sir.

Q Only the purchases?

A Yes.

Q You would say that this was an accurate copy made by you of the purchase journal of that corporation?

A Yes, sir.

MR. BRILL: I offer it in evidence, your Honor.

MR. SILVERMAN: I don't know the purpose Mr. Brill is offering it for. Is he offering it as part of the books and records of Paterno & Sons, Inc. or as the work papers of this agent?

MR. BRILL: It is a copy of the books and records.

THE COURT: I know, but if it is only a copy, then it is a copy of a book and record of the defendant corporation, which is not the best evidence; and if all you want are the books and records, you are either to put them in or account for their absence.

So Mr. Silverman's objection is a proper one.

MR. BRILL: Yes.

BY MR. BRILL:

Q Was it from Exhibit A for identification that you made the summaries which have been identified and received in evidence here as Exhibits 172 and 173 and which were passed to the jury?

A A portion of Exhibit 172 was made from the copy of the purchase journal.

Q Where was the rest of it from?

A These were from the cancelled checks.

Q Which you actually examined?

A Yes, sir.

Q Did you examine the cancelled checks for the fiscal year ended February 28, 1966?

A Yes, sir.

Q In first couple or three months of your examination which you undertook in January or December 1970, 1971?

THE WITNESS: Will you repeat that, sir?

MR. BRILL: Yes, if I may, your Honor.

Q When you began your examination, whether it be in December of 1970 or January of 1971, did you examine the cancelled checks for the fiscal year beginning March 1, 1965 and ending February 28, 1966 within the first two or three months of your examination?

A Yes, sir.

Q Did you examine the invoices against which those checks were issued?

A Not at that time, because they were not available.

Q Was the purchase book at that time available to you?

A Yes, sir.

Q Did you find in the purchase book at that time the names of the vendors?

A I did, but I didn't -- it meant nothing to me at the time until I see the cancelled checks.

Q But you had already seen the cancelled checks, had you not?

A I had seen the cancelled checks, yes.

Q So it did mean something to you at that time, did it not?

A Yes.

Q I beg your pardon?

A That is correct.

Q Now you told us on direct examination this morning that you spoke to Mr. Denti because you wanted to find out if the payees picked up those checks?

MR. SILVERMAN: Objection, your Honor. There is no testimony as to that.

MR. BRILL: I think I have a direct quote, your Honor.

THE COURT: Well, look, Mr. Brill, really, I keep asking you and telling you I don't want you to keep questioning him about what he said yesterday and this morning. The jury will remember that.

If they don't, they will ask to have it read.

Now ask him a question not about what he said but about some facts.

MR. BRILL: I will abide by your Honor's ruling.

THE COURT: Even if incorrect, go ahead.

MR. BRILL: But to lay a foundation I have to refer back to when he testified.

THE COURT: You don't have to try to recite it because then we get into these endless wrangles about whether your recitation is correct. Just refer him to the subject matter.

MR. BRILL: All right.

Q Do you recall giving any testimony this morning with respect to a conversation with Mr. Denti in which the subject matter was the checks of certain payees?

MR. SILVERMAN: Objection, your Honor. Which conversation on which date?

THE COURT: He asked for any conversation. Is that what you are asking him?

MR. BRILL: Yes, sir. Thank you.

A Yes, sir.

Q All right, can you tell us when that conversation took place?

MR. SILVERMAN: Which conversation is he referring to, your Honor?

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THE COURT: Well, are you saying there was more than one, Mr. Silverman?

MR. SILVERMAN: Yes, he testified to several conversations.

MR. BRILL: The first one.

A I didn't understand that.

MR. SILVERMAN: The problem, as I see it, is Mr. Brill asking the first conversation that he had with Mr. Denti or the first conversation that he testified to he had with Mr. Denti.

MR. BRILL: About these checks. I thought we had that clear.

THE COURT: Now, what do you want to know, when he first talked to Mr. Denti.

MR. BRILL: In otder to avoid an objection about the conversation I'd like to fix the time of the conversation.

THE COURT: You want to knowwhen he first spoke to Mr. Denti about any of these checks.

MR. BRILL: No, when he had the conversation about these particular checks in respect to certain payees whose names he mentioned earlier today.

THE COURT: All right, I won't allow the question. Askanother question.

MR. BRILL: All right.

Q Did you, in looking at the checks, early in 1971, examine checks for the period March, April and May 1965?

A Yes, I did examine March, April and May, yes.

Q Yes. Did you find among those checks that there were some checks made to one Aurrichio and one Lazravitch?

MR. SILVERMAN: Objection, your Honor. It's not what he testified to.

THE COURT: He does not have to ask him only about what he testified to.

MR. SILVERMAN: I don't understand if Mr. Brill is asking whether he testified to that.

THE COURT: He is not asking that. The reporter will read the question and it's clear enough I think. Read the pending question.

(Record read)

A During what period?

Q During the period early in 1971 when you were examining the fiscal year beginning March 1, '65, ending February 28, '66.

A Yes.

Q Did you find that for that fiscal year there were checks made to two payees, John Aurrichio and Arthur Lazravitch?

A That's correct.

Q And you found those payees prior to April 30, 1971, did you not?

A Yes, sir.

Q And you found that those checks had been cashed?

A That's correct.

Q Now, did you ask Mr. Denti if the payees -- or did you say to Mr. Denti you wanted to know if the payees had picked up those checks or the proceeds of those checks?

A Yes.

Q What were you referring to?

A I was referring whether the payees had reported the income on their income tax returns.

Q And you were asking Mr. Denti if he knew whether --

A No, I didn't ask Mr. Denti. I said I wanted to verify the fact that they picked up this income on their returns.

Q And you then asked him about those two

payees, Aurrichio and Lazravitch, right.

A I don't know whether it was just the two payees, but I did say that I wanted to verify that this income was picked up by the payees.

Q And when you used the expression "picked up" you used a term or an expression that is used by accountants and Internal Revenue agents, correct?

A That's correct.

Q And that means to find out whether or not those payees reported the income?

A That's correct.

Q Or reflected the receipt on their tax returns?

A That's correct.

Q Now, it was after that conversation, was it not, that you obtained Exhibit 149 with the names of three payees on it, isn't that so?

A That's correct.

Q Now, those are not the same names which appear on the summary which you made, Exhibit 172 for the fiscal year ended 2/28/66, are they?

A That's correct.

Q They're names which come and which you found on checks in later years?

A That's correct.

Q On further examination?

A That's correct.

Q Of checks and invoices?

A Yes, sir.

Q Isn't that true?

A That's true.

Q You saw on the invoices, did you not, the names and the addresses of the persons to whom the checks were made out?

A Yes.

Q When did you first talk to Mr. Paterno, if you did, or Mr. Denti about not finding those payees listed on Exhibit 149?

MR. SILVERMAN: Objection, your Honor, as to form, which one is he referring to? He said either.

MR. BRILL: All right, I will take one at a time, your Honor.

Q Did you talk with Mr. Denti about not finding any of the payees whose names are listed on Exhibit 149?

A May I ask when?

Q That's what I am trying to find out.

A It was subsequent to April 30, 1971.

Q When?

A I don't recall the exact time but it must

have been subsequent -- at sometime when I was up there in September.

Q Not before then?

A No.

Q You are positive about that?

A Yes, sir.

Q Now, have you looked at your daily activity records to see whether between April 30, 1971 and September 1971 you had any conversations with either Mr. Denti or Mr. Paterno?

A With respect to --

Q With respect to this matter.

A Yes.

Q Did you find that you had had conversations with Mr. Paterno between April 30, 1971 and that date in September to which you referred?

A I may have. I can't unless I refer to my activity sheet.

MR. BRILL: With the Court's permission may he refer to hsi activity sheet?

THE COURT: Yes.

MR. SILVERMAN: I was unable to find the originals. These are the copies that I have, if it's all right with Mr. Brill.

MR. BRILL: It's all right. May we have these marked for identification, please.

(Defendants' Exhibits B and C were marked for identification)

Q During the luncheon recess, Mr. Rizzo, did you look at Exhibits B and C for identification?

A During lunchtime?

Q During a recess, since we recessed for lunch?

A No, sir.

Q You did not?

A I didn't.

Q When was the last time you saw Exhibits B and C or either of them?

A I would say during the past few weeks.

Q Can you skim through those and tell us whether you had a conversation with Mr. Paterno about the payees that are listed on Exhibit 149, and if you did when it occurred.

A From my activity sheet it seems the first time -- I don't see any notation to that effect.

Q Now, have you looked at both of them, Exhibits B and C?

A No, no, there is no notation.

Q No reference in either Exhibits A or B to

any conversation with Mr. Paterno concerning these payees, correct?

A No.

(Defendants' Exhibit D was marked for identification)

Q I show you Exhibit D for identification and ask you to tell us if it bears your signature.

A It does.

Q Do you in your daily activity reports reflect the activity which is said to have occurred on the date of August 9, 1971?

A May I refer to it?

Q Please do.

A On August 9?

Q Yes, sir.

A I went to City Island.

Q Beg your pardon?

A I went to City Island, to the office of Paterno & Sons on that particular day.

Q Did you have a conversation with Mr. Paterno on that day?

A I don't have any notation to that effect.

Q You don't.

MR. SILVERMAN: Your Honor, may we have a

side bar conference on this, please?

THE COURT: All right.

(At the side bar)

MR. SILVERMAN: Defendants' Exhibit D is the memorandum made by Mr. Rizzo, of a conversation with Michael Paterno. The substance of this memo has nothing to do with the facts that Mr. Rizzo testified on direct. It has to do in fact with whether or not the firm did or did not hire private detectives to locate these people.

Now, if this is -- if Mr. Brill wants to offer this in evidence and raise the issue again of whether or not Mr. Paterno ever said to anyone the fact of private detectives, I think it only fair that I be able to question Mr. Rizzo on a conversation with Mr. Bressler. That's the one thing that your Honor said would not be brought in issue would be the substance of that conversation.

THE COURT: I didn't make a ruling about what substance is allowable.

I made a ruling on the law of evidence. There are lots of kinds of substance you can get in and there are ways you can get them in and ways you can't.

MR. SILVERMAN: I think this has nothing

to do with the direct examination of Mr. Rizzo.

THE COURT: I am not going to cut it off for that reason. If he goes into it fine. There may come a time when I will let you put that memorandum in evidence but that has nothing to do with what I did with Mr. Bressler. Let's make a deal, my errors of the morning let's leave in the afternoon and go on.

MR. SILVERMAN: I did not consider it an error. I considered it a correct judgment and I thought it advisable to have this piece of evidence --

THE COURT: No, it's a different subject.

Q Mr. Rizzo, is it true that on August 9th, 1971, you and Mr. Ayres had a conversation with Mr. Paterno in which you were informed by Mr. Paterno that his then attorneys had hired a private detective in connection with these payees? That is the substance of it?

A Yes.

Q And that was on August 9, 1971 that you were so informed?

A Well, I don't have a notation of my activity sheet, but if I can see the memorandum that I signed I am sure I can tell you.

Q By all means. Exhibit D for identification: Does that refresh your recollection?

A After I read it, counsel.

Q All right.

A Yes, sir, that is correct.

Q Now, the next conversation that you had with Mr. Paterno, if you had one, in September of 1971, was Mr. Ayres present?

A I believe that from thereon in every time I went up to Paterno & Sons, the office of Paterno & Sons I was accompanied by Mr. Ayres.

Q And did you in September whenyou got the copies or the records from which you prepared, or from which you

made Exhibit A in evidence, did you have a conversation with Mr. Paterno?

A I had a few conversations; I don't know which one you are referring to.

Q Well, did you tell Mr. Paterno in September or a later time that you thanked him for his cooperation and his company's cooperation in connection with your examination of his records?

A I would think so, yes.

Q Did you or not?

A I did.

Q Okay. Was Mr. Ayres present at the time?

A Yes.

Q Again referring to Exhibit A for identification, isn't it true that Exhibit A was the source from which you made and prepared Exhibits 172 and 173 which were passed to the jury?

A A portion of 172 and all of 173 was prepared from these particular records, yes.

Q And that portion --

MR. BRILL: Judge, I think the smell of something burning is getting worse.

THE COURT: What is going on is that some of our marshals are burning contraband.

Do you think you can go on or do you want a recess?

MR. BRILL: Well, I have had a history of asphyxiation and heart trouble --

THE COURT: Do you want a recess?

MR. BRILL: I think I need one.

THE COURT: All right, if you need one let's take one. Let's take ten minutes.

(Recess.)

THE COURT: All right, Mr. Brill.

BY MR. BRILL:

Q Mr. Rizzo, will you be good enough to tell us, please, all of the books and records that you used and which you copied in connection with your preparation of the schedules now known as Exhibit A?

A I used the purchase journal.

Q Anything else?

A For Exhibit A?

Q Yes.

A I used the cash disbursement -- if I can refer to it, I believe in the last few schedules I used the cash disbursements.

Q By all means.

A Yes, I used the cash disbursements book.

Q Anything else?

A I had to use the general ledger too.

Q Anything else?

A General journal.

Q Anything else?

A No, that is all.

Q And you made correct copies on Exhibit A of all the entries in all of those books, is that correct?

A They tied out; they tied out to the figures shown on the general ledger, which I believe is correct.

Q I must confess I don't know what that means.

Is Exhibit A a copy of the contents of those four books that you have just described?

A Exhibit A --

MR. SILVERMAN: Excuse me, your Honor, is he asking Mr. Rizzo, is Exhibit A a photostatic copy or is it his copy of the figures in those books?

MR. BRILL: Right.

THE COURT: He may answer.

Go ahead.

A It is a copy of my figures of the purchase journal.

Q And you were careful to insure that you made no mistakes?

A Yes.

Q So you would say that is a correct copy of the

figures in those four books which you included in Exhibit A for identificaton?

A Can I qualify my answer?

MR.BRILL: That is up to his Honor.

THE COURT: Go ahead.

A I did tie in the purchase journal. I didn't make a complete analysis of the cash disbursement's journal but I did tie in the purchase journal into the control account which is the general ledger, and I proved my figures monthly, yes; but insofar as the cash disbursement journal, I only selected certain items that pertained to these particular truckers.

Q Those five payees?

A Yes.

Q And the entries that you made on Exhibit A for identification which you took and copied from the cash disbursements book were correct copies with respect to those five payees, is that right?

A The purchase journal, not the cash disbursements journal. The purchase journal, yes.

Q How about the cash disbursements?

A I checked the cash disbursements against the checks, and that is how I made my analysis of the checks.

Q You had the physical checks in your possession?

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A I had copies of the checks before I had physical possession of the originals.

Q And they were also furnished to you by Paterno & Sons, Inc.?

A Yes.

Q And you used the copy of the checks which you compared with the originals?

A Yes.

Q And you were satisfied that they were correct copies of the originals?

A Yes.

Q And you checked those against the cash disbursements book?

A Yes.

Q And as a result of that you were able then to prepare this document which is Exhibit A for identification?

A Yes.

Q And it was from Exhibit A for identification from which you extracted the material which you incorporated in Exhibits 172 and 173, isn't that correct?

A A portion of 172 and 173.

Q Will you be good enough with this colored pencil to encircle that portion of Exhibit 172 which came from the

purchase journal, and will you be good enough, with his Honor's permission, within that circle to note "From purchase journal."

A (Witness marks.)

Q Now the balance of the information contained in the three columns on the right-hand side of Exhibit 172, Mr. Rizzo, where ddi you get that information?

A From the cancelled checks and the cash disbursements.

Q Will you encircle that, please,and mark the sources?

A (Witness marks.)

Q Now with respect to Exhibit 173, will you tell us please what records you used to prepare that from Exhibit A for identification?

A From my schedule, I analyzed my schedule and I was able to prepare this particular one.

Q Is everything that is contained on 173 contained in Exhibit A for identification?

A Yes.

Q And will you identify, as you did with respect to 172, the sources, the original sources from which you got the figures which you copies onto Exhibit A?

A It is the purchase journal.

slbr 8 Rizzo-cross

Q Would you be good enough to indicate that?

A (Witness marks.)

Q All of this information on 173 came from that one source, the purchase journal?

A Yes.

Q And all of it is contained in Exhibit A for identification?

A Yes.

Q Now some time in the summer of 1971 did you have occasion to visit a site on which Paterno & Sons, Inc. was doing a job under a contract?

A I don't recall just the exact date but I did visit a site, yes.

Q Was that job known as Utopia Parkway?

A Yes.

Q Does your daily activity record show whether you visited such a site in the summer of 1971?

A I don't know what date it was.

Q Would you be good enough to look at it with his Honor's permission?

MR. BRILL: Those are Exhibits B and C, I think, your Honor.

THE COURT: Mr. Brill, can I ask you why we need this? He told you he visited it. What is the point?

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MR. BRILL: I was just trying to fix a date, that is all, Judge.

A I don't recall the date, your Honor.

Q Is it fair to say that it was in the summer of 1971?

A I don't recall the date I went down there. I took a ride with Mr. Michael Paterno.

Q There did you see the activity that was being conducted on that job at that time?

A Yes.

Q Did you see excavation work?

A I did.

Q Did you see the pouring of concrete?

A I did.

Q Did you see the laying of reenforcing steel?

A Yes.

Q Did you see backfilling?

A Yes, I did.

Q Did you see sheeting?

A Yes.

Q Did you see the laying of asphalt?

A I don't know. Asphalt was being laid at the time but Mr. Paterno did show me the whole operation.

Q And did you see catch basins and manholes?

A Yes.

Q Did you see trucks on the property?

A I did.

Q Did you see trucks that had no identification on them?

A I don't recall.

Q Would you say that you did not?

A I didn't say that I didn't, but I don't recall.

Q Do you now say that you did not?

A I don't recall whether there was names on the trucks at the time.

Q Can you now say that you did not see any trucks without names?

A I can't say.

Q I beg your pardon?

A I can't say.

Q Is it fair to say that Mr. Paterno pointed out trucks to you which had no distinguishing marks?

A I can't say for sure.

Q Can you say that he did not?

A No.

Q Is it fair to say that Mr. Paterno invited you to talk with the drivers of those trucks so that you could ascertain for yourself where they came from?

slbr 11 Rizzo-cross

A No.

Q You know that and you are positive in your recollection of that?

A Yes.

Q Did you make a memo of that fact in your daily activity records?

A I did not.

Q You did not?

A No, sir.

Q And you know that without even looking at the daily activities record?

A Yes, I know that very well.

Q And you were at the time concerned about whether or not there were, in fact, truckers to whom checks had been made payable whom you could not locate, is that true?

A No, that was not at that time.

Q In the summer of 1971?

A I don't think it was in the summer of 1971. I made no further contract after -- no contact by myself after April 30th.

Q Did you do it with somebody else?

A I may have gone on a job site but I don't recall.

Q Did you make contact with any of the locations

slbr 12 Rizzo-cross

with another agent after April 30th?

A Yes.

Q Did you make a record in your daily activity report with respect to what you saw or did not see on the job site that you visited during the summer of 1971?

A I don't recall.

Q Well, can you refresh your recollection by looking at it?

THE WITNESS: Well, if I can qualify my answer, if you will permit me to qualify my answer, then I can explain.

THE COURT: Go ahead.

A When I was with Special Agent Ayres I didn't think it was necessary to put all the details in my activity sheet because he kept a pretty accurate chronology of events, so I thought it was a duplication.

Q All right, that is your explanation of why you didn't have it in your daily activity sheet?

A That is correct.

Q Was Mr. Ayres with you on this trip in the summer of 1971 at the Utopia Parkway job?

A Yes.

Q He was?

A Yes.

Q And you didn't indicate that at all in your daily activity sheet?

A I don't know. I would have to look at it.

I don't have any notation to that effect.

Q None at all?

A No, because --

Q And no reference to the fact that you went to Utopia Parkway in the summer of 1971?

A I do not.

MR. BRILL: Thank you.

I have no further questions, your Honor --

MR. BRILL: Oh, excuse me.

BY MR. BRILL:

Q Just to be sure that we are talking about the same visit, did you make more than one visit to a job site?

A Well, I went with Mr. Paterno one time; I went with Special Agent Ayes. I don't recall any other visits other than those two.

Q Have you talked with Mr. Ayres about his report reflecting the occurences on the date of that visit?

A No.

Q Have you seen them?

A I didn't review his activity sheets, no.

Q When there is activity reports of two agents, is it not customary and within the requirements of the Internal Revenue Service that both agents sign the report?

A I would say -- sign the report?

Q Yes.

A If there is a memorandum, yes.

Q And thiswas not of such significance to you at the time that to your knowledge you made no report on it?

A That is correct.

Q And so far as you know now you never signed a report made by Mr. Ayres?

A I don't recall.

Q Do you say that you did?

A I am not saying that I did either.

Q And you are not saying that you did not?

A That is correct.

MR. BRILL: Thank you

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Now, Mr. Rizzo, when you first appeared at Paterno & Sons did you receive full cooperation?

A Yes.

Q And the first man you spoke with was George Denti, is that right?

A I believe it was the accountant. George Denti was the accountant at the time.

Q Was the accountant?

A Yes.

Q And you were told to make yourself at home?

A That is correct.

Q You were given a room or a desk to work at?

A That is correct.

Q An open sesame, is that right?

A Correct.

Q And there came a time when you checked certain checks, certain invoices, and I believe --

MR. ROSENTHAL: May I have those exhibits, 147 and 148, Mr.Silverman?

THE WITNESS: Right here.

Q There came a time when you picked out certain checks, did there not, including Government's Exhibit 13, is that right? The government's Exhibit 13 was one of those checks you picked out?

A That is correct.

Q Do you remember the other two checks that you say you had no invoices on --

A I don't remember the numbers. I don't know that I have an analysis of which had invoices.

slbr 16 Rizzo-cross

Q Well, will you look at 29.

A Yes?

Q Was that another one of them?

A Yes.

Q Now on 13 and on 29 there appears in the upper left-hand corner "No Inv"; is that correct?

A That is correct.

Q That is true of 13 also, is it not?

A It may be.

That is correct.

Q What?

A That is correct.

Q Now, sir, do you remember whether that legend appeared on those checks at the time you first examined them?

A No, they did not.

Q They did not?

A No.

merl Rizzo-cross

Q And do you remember who wrote that original there?

A I believe it was George Denti. I can't be positive.

Q It wasn't you?

A It was not me.

Q And was that as aresult of your discussing with George Denti the fact that you could not locate invoices for those two checks and one other that appears there?

A Yes.

Q And do you recall George Denti telling you that originally there had been invoices for every item?

A Yes.

Q And that either they were misplaced by Paterno & Son or they may have been misplaced by yourself in handling the invoices and the checks.

A I didn't have the invoice.

Q Well, you had access to the invoices, did you not?

A Yes, but I never got the -- that's correct. That's correct.

Q Now, look in the early part of that book. I think it's the first nine or ten checks in that book.

mer2 Rizzo-cross

Starting with No. 1, in the upper righthand corner, the initials GD appear, do they not?

A No, GJD.

Q GJD. And they are circled?

A Correct.

Q Now, who put that on there?

A George Denti.

Q And did he put it on before the check cleared the bank or after the check cleared the bank?

A After the check cleared the bank.

Q That was put on there at a time when George Denti delivered those checks to you and Mr. Ayres?

A Yes.

Q Down at the office at the Internal Revenue Service, did it not?

A Yes.

Q And it was as a result of the request of Special Agent Ayres and yourself that he do that?

A Yes.

Q So that those checks with the GJD on are not in the same form or the same shape that they were when they originally cleared the bank?

A That's correct.

Q And that is also true of the three checks

with the no Inc. on it?

A That's correct.

Q Now when you requested George Denti to produce the checks that are Exhibits 1 to 47, and the invoices which run from -- invoices, this other book -- they run from 1A to 47A -- when you asked him to produce those down at the office of the Internal Revenue Service, did he offer any objection?

A No.

Q Did he ask you to get a subpoena or a summons for them?

A No.

Q Now, if he had done that, that would have required at least ten days notice, would it not?

A That's correct. Correct.

Q But he complied immediately, did he not?

A He did.

Q I can't hear you when you shake your head, sir.

A He did.

Q Thank you.

And Mr. Rizzo, when you asked George Denti to bring those to the office, did you tell him in advance that they might be used as evidence against him?

A Now, I believe he must have gotten a formal request from the special agent to produce these invoices and checks.

Q When you say a formal request, do you mean in writing?

A I believe so.

Q Do you know if any such document exists?

A I believe so.

MR. ROSENTHAL: Do you have a copy of that, Mr. Silverman?

(Document handed to counsel)

MR. ROSENTHAL: Thank you.

Q And in that formal request, is there any advice --

MR. ROSENTHAL: I ask this be marked for identification.

(Defendants' Exhibit E was marked for identification)

Q I show you Defendants' Exhibit E for identification and ask you whether or not there is any advice in that formal request to the individual George Denti.

MR. SILVERMAN: Objection, your Honor. It's totally irrelevant to the matter before the jury.

THE COURT: Why is it relevant, Mr. Rosenthal?

MR. ROSENTHAL: I won't pursue it further, Judge.

Q That request is dated when?

A July 21, 1971.

Q And it asked him to produce them -- does it set forth a date?

A July 28, 1971 at 2 p.m.

Q And is that the time and date that he appeared?

A I don't know about the time but I know it was the date.

Q Right. Now, sir, do you recall the physical condition of Mr. Denti when he appeared on the 28th of July of 1971?

A No, sir.

Q Do you recall him complaining about the fact that he was suffering from gout?

MR. SILVERMAN: Objection, your Honor. It has no relevancy to his appearance.

MR. ROSENTHAL: I submit this is of importance, your Honor, in view of something Mr. Silverman has asked me to do.

THE COURT: In view of what?

MR. ROSENTHAL: If your Honor would prefer a side bar conference I think I can explain why I am going into this.

THE COURT: All right, come up to the side bar.

(At the side bar)

MR. ROSENTHAL: Mr. Silverman has submitted some selected questions and answers of George Denti that were taken at the -- I guess you call it interview --

THE COURT: He had submitted them?

MR. ROSENTHAL: What? Mr. Silverman has submitted to me some proposed selected questions and answers of George Denti that were taken on the 28th of July which he wants me to stipulate as to their accuracy and the like.

I have not gone through that record completely and I am not in a position to do so until I get certain material from Mr. Silverman, but some of the questions and answers for that period do not seem to be in proper sequence, shall I say, and the defendant has advised me that during the period of his questioning which took a period of I think over four hours, he was suffering great pain, constantly complaining to the agents about his pain,

that he was taking medication for his gout, and there is nothing in the record to indicate that whatsoever.

THE COURT: I don't think it's relevant at this time and if the other thing comes in and you want to call this man as your witness at some point I may allow it, but I can't see the relevancy of it in the present state of the record.

The other thing is not even in evidence, is it?

MR. SILVERMAN: No, I told Mr. Rosenthal that I intended to offer certain selected portions of the transcript. I told him that I have spoken to the reporters who took down the minutes ofthat particular hearing, if you want to call it a hearing as such, and they compared their copies to the stenographic notes which they found accurate except for one or two misspellings and I intend to offer those statements in evidence.

As to whether there are any explanations of his condition at that hearing, it would be in that transcript and that's all I have. If he wants to call them as witnesses as to whether or not Mr. Denti complained of gout at that time, but as I recollect, he was advised of his constitutional rights, he was advised if at

any time during this hearing he did not want togo on, he should signify such and the matters would be adjourned.

THE COURT: I don't see what it's relevant to at this time.

MR. ROSENTHAL: I think it's relevant as to the accuracy of the transcript, Judge. There isn't a word in there of any complaint made by him as to his physical condition. There was a bomb scare and an interruption of that proceeding. There isn't a word in there as to that.

MR. SILVERMAN: There are pauses in the transcript of a recess.

THE COURT: The interruptions of a transcript for things like bomb scares and placing a bet with your bookie and whether you have a headache --

MR. ROSENTHAL: You can't find one today.

THE COURT: -- are not commonly put on the record.

I think at this time I don't want it.

(In open court)

Q Now, sir, going back to your stay or tour of duty with Paterno & Sons, during the period that you were there examining books and records and checks and whatnot, did any camaraderie develop between you and

George Denti?

A I would say so, yes.

Q And it was not unusual for you and Mr. Denti and perhaps some other people connected with the business or firm of Paterno & Sons to have lunch on occasion, is that right?

A That's right.

Q As a matter of fact, sir, am I correct that you even posed for and had your picture taken with Mr. Denti?

A I don't recall.

Q You don't recall?

A No.

Q Well, do you recall being at luncheon in City Island --

A Yes.

Q -- with Mr. Denti and with a Nick Rambone, who is employed by Paterno & Sons?

A I don't ever remember Nick Rambone being at lunch with us.

Q And do you remember a salesman from the Kerr Concrete Pipe Company being at that luncheon?

A No, I don't recall.

Q With a new camera?

A No.

Q And wanting to show off and test the new camera?

A No, sir.

MR. ROSENTHAL: May I have this marked for identification,please.

(Defendants' Exhibit F was marked for identification)

Q Now, I show you the Defendants' Exhibit F for identification and ask you who the person is in the righthand side of that picture?

A On the righthand side?

Q As you look at it.

A Mr. Denti.

Q Where is Mr. Denti?

A He's at my right.

Q No, I said who is the person on the rightnand side of the picture?

A That's me.

Q And who is immediately next to "me"?

A George Denti.

Q And who is the thirdman in the picture?

A Nick Rambone.

Q And do you recall now that being taken?

AA Yes.

Q Do you recall the occasion?

A Yes, it was after lunch.

Q It was after lunch?

A Yes.

MR. ROSENTHAL: I offer this in evidence, your Honor.

MR. SILVERMAN: Objection, your Honor. What relevance does it have to the matter before us?

THE COURT: Overruled.

(Defendants' Exhibit F was received in evidence)

MR. ROSENTHAL: May I pass it to the jury while I continue my interrogation?

THE COURT: Yes.

(Document passed to jury)

Q Now, Mr. Rizzo, there is no question in your mind that if you were at the office of Paterno & Sons on April 30, 1971, is that correct?

A That's correct.

Q And that's borne out by your activity record or log or whatever title you want to give it, is that right?

A That's right.

Q Now, can you fix with any reasonable certainty at all when you next went there?

A When I next went there?

Q Yes.

A I went there several times. Now I can't recite the particular dates. If I do refer to my activities sheets I can tell you the dates.

Q Well, didn't you earlier tell us that you thought it was -- didn't you earlier tell us that to the best of your recollection you didn't return there until sometime in September?

A That's correct.

Q Well, it's correct that you told us that, but is that correct, is what you said correct?

A Yes.

Q Do you remember there being some window boxes at the office?

A Yes.

Q And George Denti growing tomatoes from seed?

A Yes.

Q And growing them in the window boxes?

A Yes.

Q And do you remember returning to the office of Paterno & Son sometime in late July or August and

finding his tomato plants decimated?

A Yes.

Q And do you remember --

A I don't remember the precise date, but yes, we -- if I may interject, we were sort of vyeing with each other raising tomatoes.

Q Sort of a challenge to each other, is that right?

A That's correct.

Q And do you remember the fact that your tomato plants had prospered and had borne beautiful fruit?

A That's right.

Q And you made that known to Mr. Denti?

A That's correct.

Q In no uncertain terms?

A That's correct.

Q And wasn't that in the month of August?

A Again, I can't recite the precise date, but I don't think tomatoes -- well, tomatoes don't bloom in August.

Q I am not talking about blooming, I am talking about bearing fruit.

A Well, my plants were much healthier than his,

yes.

Q And they had healthy tomatoes on them, didn't they?

A They had blooms on them.

Q So that's earlier than August?

A It all depends on when you plant them.

Q Well, it had to be sometime around the 30th of April, didn't it?

A No, they don't bloom that early.

Q No, I said -- all right.

Does that refresh your recollection at all as to when you went to Paterno & Sons after the 30th of April?

A I would say it was after Mr. Denti came down on the Q and A.

Q That was July 28?

A In all probability after that.

Q And would it not be before mid-September?

A Could be, yes.

Q Now, you returned to Paterno & Sons in July, did you not, of '72?

A In July of '72?

Q Yes.

A I would have to refer to my activity sheet to

make a definite statement on that.

Q All right, would you do that and if you have difficulty I might be able to give you something that will refresh your recollection.

A I was there on August of '71, August 9, I went there on August 10, I was there on August 18.

Q And you were there in July of '72 also, weren't you?

MR. SILVERMAN: Excuse me, are we referring now to '72?

MR. ROSENTHAL: Yes.

A I don't see a notation to that effect.

Q You don't find any memo of that?

A No.

Q Do you recall the time when you were there in the office of Paterno & Sons in 1972 when it came to the attention of yourself and Mr. Denti that one of the employees of Paterno & Son had received a grand jury subpoena?

A I don't recall.

Q You don't recall that at all?

A No, sir.

Q You don't recall expressing annoyance and displeasure over the fact that the grand jury subpoena

was served at a period and time when you were working in the office of Paterno & Sons?

A I don't remember the incident, no.

Q Now, sir, in your checking through the records of Paterno & Sons, am I fair and correct in assuming that you checked into the general background as to when the corporation was formed and how long it had been in business and the like?

A I questioned -- I questioned him, yes.

Q And you learned that the corporation had been formed I believe in 1956?

A That's correct.

Q And you learned from the books and records that Mr. Denti had started as a part-time employee in around 1963 and became a full-time employee in November of '66?

A That information we received I believe at the Q and A on July 28, 1971.

Q Well, the payroll book alone would also give you that information, would it not, and the difference in salary and the like?

A Well, I don't go beyond the fiscal year '66. I don't go into the records prior to that period.

Q No, I am talking about the year '66, and if he

started in November of '66 on a full-time basis, there would be a further period that was on a part-time basis, in that fiscal year, would there not?

MR. SILVERMAN: Your Honor, my objection is that in view of the circumstances involving the payroll checks that we are now talking about I think it's inappropriate at thistime for Mr. Rizzo to be questioned about thos particular payroll checks.

THE COURT: If you are trying to prove the facts of his employment in this way, Mr. Rosenthal, I don't think you are allowed to do it, it's hearsay, and I will sustain the objection on that ground.

Q Well, did you ascertain, sir, from the books and records of Paterno & Sons, as well as from conversation with George Denti, that he was not a stockholder or shareholder in Paterno & Sons?

A Yes.

Q And that although he held office, that it was a nominal office?

A Yes, sir.

MR. ROSENTHAL: I have no other questions.

REDIRECT EXAMINATION

BY MR.SILVERMAN:

Q Mr. Rizzo, now that you have been shown this

picture --

A Yes, sir.

Q -- do you recognize it?

A Yes.

Q When was it taken?

A Sometime before April 30, 1971. It was in the wintertime.

Q And Mr. Rizzo, on any occasion did you ever go out to lunch with Mr. Denti?

A Yes.

Q And on any occasion did you ever go out to lunch with Mr. Paterno?

A Yes.

Q On those occasions when you went out to lunch who paid for the check?

A Mr. Paterno and Mr. Denti.

Q Did you on any occasion pay for the check?

A No.

Q On each and every occasion that you went out to lunch you did not pay for your lunch but they did?

A That's correct.

Q Now, could you please tell the ladies and gentlemen of the jury the present -- withdrawn.

Will you please tell the ladies and gentlemen

of the jury the regulations of the Internal Revenue Service as to revenue agents as to whether or not they must pay for their lunches or whether the clients or the persons, the taxpayers are allowed to pay for their lunches?

A The taxpayers are --

THE COURT: Wait just a second.

MR. ROSENTHAL: Your Honor, the questions were not intended or directed for the purpose of what Mr. Silverman thinks they were. There was never any intimation on my part in my questioning of Agent Rizzo that there was any impropriety in his going to lunch with Mr. Denti or with other people, nor did I ask any questions about who paid. The sole purpose of my interrogation was to show the spirit of camaraderie that had developed between Mr. Rizzo and the staff at Paterno & Sons during the period that he was there.

MR. SILVERMAN: I think it's appropriate that the jury would not draw a wrong inference from these lunches.

THE COURT: They are not going to draw wrong inferences if everybody has agreed that it would be wrong and I take it everybody is agreed that there is no suggestion of impropriety with respect to those lunches on

anybody's part.

MR. ROSENTHAL: No question about it.

THE COURT: Is that a fair statement?

MR. ROSENTHAL: Absolutely.

THE COURT: Let's go on. We don't want to be sidetracked.

Q Mr. Rizzo, inreference to the cites that Paterno & Sons did their construction work, their excavation, were you ever at the Rockaway job?

A The Rockaway job? No.

Q Were you ever at the Carmel job?

A Yes.

Q Were you ever at the Cedarhurst job?

A Yes.

Q Were you ever at the Juniper job?

A No.

Q Were you ever at the Johnson Morgan job?

A Yes.

Q Were you ever at the Watson Avenue job?

A We passed by.

Q Were you ever at the Polo Grounds job?

A No.

Q Were you ever at the Rikers Island job?

A No.

Q So in other words you went to several of their job sites and several of them you didn't go to?

A That's correct.

Q Now on these occasions that you went to these job sites did you go there alone or with someone else?

A I went with special agent Ayres.

Q Now, prior to April 30, 1971, did you ever go on any of the job sites?

A No.

Q After April 30, 1971, on approximately how many occasions did you go to different job sites?

A Quite a few.

Q And on any of those occasions did you go alone?

A Yes.

Q On what occasions did you go alone?

A I went to the Cedarhurst job. The special agent at the time was off that day, so I went to Cedarhurst.

Q Now, Mr. Rizzo, did you examine the books and records of Paterno & Sons, Inc. for the period after 2/28/70?

A No.

Q You did not?

A No.

Q How did it come about that you didn't examine those books?

A Well, the procedure dictates that we are not supposed to examine any more than a five-year period.

Q Now, do you have any knowledge as to whether or not there were any checks payable to the five payees in questions, Aurrichio, Lazravitch, Ferrotta, Catenzaro and Tuccella for the period after 2/28/70?

A I have no idea.

Q Now, on April 31, 1971, Mr. Denti gave to you, I believe, Government's Exhibit 149?

A Yes. Here (indicating).

Q When he handed you that exhibit did he tell you who prepared that exhibit?

A No.

Q Did you see who prepared that exhibit?

A No.

Q Now on the occasion of October 18th, I believe it was, 1971, when Mr. Denti gave you a sample of his handwriting, was that the first occasion that you asked him for a sample of his handwriting?

A No.

Q Did you ask him for a sample of his handwriting on a previous occasion?

A Yes.

Q And on that occasion did he write or give you a sample of his handwriting?

MR.ROSENTHAL: That is objected to, if the

Court please.

THE COURT: Pardon?

MR. ROSENTHAL: That is objected to, if the Court please.

THE COURT: On what ground?

MR. ROSENTHAL: On the ground that the defendant not know what his rights were partially complied with his request and then had second thoughts and asked for time to check out if he could --

THE COURT: Wait a second. You are just testifying, Mr. Rosenthal. That is not a ground of objection. You are asserting certain facts. I don't know whether they are true or false, but I told the jury that you and I don't give them facts.

The objection is overruled.

Q Did he commit the names of these payees to writing?

A Not all of them, no.

Q Some of them?

A He started with John Aurrichio --

Q After he completed the name of John Aurrichio how many times did he write it?

A Five or six times.

Q Did he then give you the paper?

A No.

Q What did he do with it?

A Ripped it up.

MR. BRILL: Your Honor, I object to it on the ground that it is improper redirect and it is not binding on Mr. Paterno or Paterno & Sons, Inc.

THE COURT: Well, the jury will understand whatever lawyers and judges mean by binding, that an act performed by A quite alone is not performed by B. So that part of it is not of great importance.

The remainder of the objection is alsooverruled.

BY MR. SILVERMAN:

Q Mr. Rizzo, there was a question asked of you in cross examination as to where your office is in relation to Mr. Ayres.

Now,your office is located at 120 Church Street?

A That is correct.

Q Is Mr. Ayres located there?

A Yes.

Q Are you on the same floor of the building?

A We are on the same floor.

Q Is your desk next to his?

A No.

Q Where is your desk with relation to his desk?

A 50 feet.

Q And during the course of your work did you have other cases during that period?

A Yes.

Q And was Special Agent Ayres the special agent assigned to work with you on those cases?

A There was a special agent, yes.

Q Was it Special Agent Ayres?

A No.

Q Was this the only matter that you have worked with him on in the last three years?

A Yes.

Q Mr. Rizzo, I would like to just clear up one matter, as to whether or not you saw either one of these defendants during the summer of 1971.

Is there an entry in your activity sheet for July 28, 1971?

A There is an entry, yes, July 28, 1971, yes.

Q And what does that entry say?

A Q and A, George Denti - the person contacted, George Denti, Q and A with Special Agent Ayres.

It lasted until 7 p.m.

MR. SILVERMAN: I have nothing further, Mr. Rizzo.

RECROSS EXAMINATION

BY MR. BRILL:

Q Did you intend to convey to this juror that you visited the sites of these other jobs while there was work going on there?

A No, the work had been completed in previous years.

Q Several previous years?

A That is correct.

Q For example, Watson Avenue had been completed in or about December of 1968, isn't that right?

A I don't know; I don't know when it was completed.

Q You didn't find out about that?

A No, sir.

Q The Cedarhurst had been completed --

THE COURT: Mr. Brill, you are asking him questions as to which I think it is clear he cannot have personal knowledge.

Q Did you make any inquiry with respect to when it was completed?

A No.

Q Did you make any inquiry to ascertain whether Cedarhurst was completed prior to the end of 1968?

A I don't understand that. I mean, I just can't get your question.

Q I see.

A Inquiries of whom?

Q Anybody, in the course of your extensive, in depth investigation.

MR. SILVERMAN: Objection, your Honor.

THE COURT: All right, Mr. Brill, suppose someone did tell him when the Brooklyn Bridge of Watson Avenue was completed, it is the sheerest kind of hearsay and I won't allow it.

Let's go ahead.

MR. BRILL: Will your Honor hear me on this in view of the direct examination?

THE COURT: No.

MR. BRILL: I respectfully except.

May I continue with respect to these other places?

THE COURT: The same question?

MR. BRILL: I will alter the question.

THE COURT: Pardon me?

MR. BRILL: I will change the form of the question.

THE COURT: It is not the form of the question; it is the substance.

I will hear you. Maybe there is something to this

which I am missing.

Why is it not hearsay for him to report what somebody told him when something was completed?

MR. BRILL: Well, perhaps I have the wrong impression, your Honor, but it was my impression when the questions were asked about some five jobs to which sites Mr. Rizzo said he went and alone, that those jobs were in progress at that time --

THE COURT: I don't care what your impression was. I am not going to allow you to elicit hearsay.

Now you may proceed.

BY MR. BRILL:

Q When you went to the site at Cedarhurst did you find that there was work in progress at that time?

A There was not.

Q When you went to the site on Johnson Avenue, did you find that there was work in progress at that time?

A There was not.

Q When you went to Watson Avenue did you find that there was work in progress at that time?

A There was not.

Q When you went to Juniper did you find that there was work in progress at that time?

A I didn't go to Juniper.

Q You did not go to Juniper?

A No.

Q When you went to any of the other sites -- I think that is all you said you went to, right, Cedarhurst, Johnson and Watson?

A I think that's it -- and Carmel.

Q And Carmel?

A Yes.

Q Was there work in progress there?

A No.

Q Now this description of the room which you and Mr. Ayres both shared or had desks in, was it the same room in which those desks were located?

A Well, we have partitions between groups, and we have a wall --

Q Is it in the same room, that is all I want to know?

A Is it in the same room? I would say no.

MR. BRILL: All right, thank you. Oh, by the way, excuse me.

Q Did you say that you made one or two visits to Utopia Parkway?

A There was one with Mr. Paterno and one with Special Agent Ayres.

Q Which one did you make first?

A With Mr. Paterno. That was during the examination.

Q In the summer of 1971?

A No, no, sir. It was during the examination.

Q Prior to the end of May 1971?

A Prior to April 30, 1971.

Q All right. And when did you go with Mr. Ayres?

A Some time between -- I think it was some time in June.

Q Of the same year?

A Yes, sir.

Q Now, on the occasion when you went alone you made no reference to it in your daily activity sheet?

A That is correct.

Q On the occasion when you went with Mr. Ayres you made no reference to it?

A I believe he did.

Q But you didn't sign his report?

A I don't know. I don't know if he has a memorandum on that particular visit. I don't know.

Q And you can't say that you did sign it?

A I can't say that I did, no.

MR. BRILL: Thank you.

RECROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Rizzo, do you recall when it was that you first asked George Denti to give you exemplars of handwriting?

A Do I remember when he first --

Q The approximate date?

A I can't -- I might if I can refer to my activity sheets.

Q Before you took the stand here today you knew that that question was going to be asked you by Mr. Silverman, did you not?

A No.

MR. BRILL: I didn't hear that answer.

THE WITNESS: No.

Q Did you discuss your prospective testimony or the outlines of your testimony with Mr.Silverman?

A Yes, I did.

Q Today?

A Today, yes, I did.

Q Or yesterday or last night?

A I don't know, no -- I don't think it was last night. It may have been yesterday morning.

Q And among other things he had asked you about an

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incident where you had asked George Denti for exemplars, did he not?

A I beg your pardon?

Q Among other things that he questioned you about there was included an incident when you asked George Denti was an examplar of handwriting?

A Yes.

Q Or a sample of handwriting?

A Yes.

Q And did you at that time refer to your sheets?

A Maybe for the date but not the incident.

Q I say for the date?

A Yes.

Q Can you tell us now, having referred to your sheets within the last couple of days as to when you first asked George Denti for a sample of his handwriting?

A If I can refer to them -- let me make one thing -- if I may -- when I was with Special Agent Ayres I made very brief notation on my activity sheet because I knew he would have it in detail.

Q But when you were with Mr. Silverman being prepared or questioned in connection with preparation for your appearance as a witness you had access to both your sheets and Special Agent Ayres' sheets, did you not?

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A Not Special Agent Ayres' sheets, no. My own, yes.

Q Were you able to establish a date at that time?

A We didn't cover this point and I didn't review it.

Q Can you give us any approximate date at all?

A If I can refer to my activity sheet I may be able to.

Q I have no objection to your referring to your activity sheet.

A I was up there on August 9th; I was there on August 10th. I was there on August 9th and August 10th. I was there on September 21st; I was there on October 15th.

Q Is there anything in your activity sheets that reflects the fact that prior to the 18th of October of 1971 you asked George Denti for examplars of handwriting and that he gave you partial samples and then took them back and destroyed them?

A No, but I think I may have prepared a memorandum; I may have typed a memorandum for Special Agent Ayres on that particular item, but I don't have it in my activity sheet, no.

Q All right, without the date, can you remember what Mr. Denti said at the time?

A He started to write samples of John Aurrichio,

and midway down he said, "Gee, I will have to check with the lawyer."

Q Didn't he ask you whether or not he was doing the right thing?

A I don't recall.

Q Or words to that effect?

A No, I don't recall.

Q You don't recall?

A No, sir.

Q And you don't recall him asking you, "Well, is this all right for me to do?"

A He may have. I believe he did.

Q And then there came a time when he said he wanted to check with the lawyer?

A Yes.

Q There was nothing wrong with that, was there?

A No, sir.

Q Had you advised him of his rights before you asked him to do that?

A Well, Special Agent Ayres was living at the time, and I believe that he was the one that should have advised him of his rights if he should have had his rights at that time.

Q Well, do you know whether Special Agent Ayres did

or not?

A Yes, he did, at the time of the signing.

Q I am talking about at the time of the incident when you say "He signed, I think, a half dozen and then took them back and destroyed them"?

MR. SILVERMAN: Your Honor, these documents that we are referring to, the substance of these are not in evidence. The substance that is in evidence, there is no question about whether he was advised of rights or should have been advised of rights. They are already submitted in evidence. I do not see any purpose as to whether or not he was advised of rights at a time prior to the time the evidence was received.

THE COURT: Do you object as irrelevant?

MR. SILVERMAN: Yes, your Honor.

THE COURT: I will sustain it.

BY MR. ROSENTHAL:

Q Did you attempt to secure the exemplars that had been torn up or crumpled up or thrown away?

A No.

Q Where was this, in the office of Paterno & Sons?

A Yes, right near the photostat machine.

Q What?

A Right near the photostat machine.

Q Right near the photostat machine?

A Yes.

Q Do you have any memorandum anywheres of this event?

A I don't, but I believe Special Agent Ayres may have. He may have. I don't.

Q Well, did you read any memorandum prior to testimony here today, whether it be yours or Special Agent Ayres or Agent Abrams, or anybody's,about this event?

A I may have, I can't be sure.

Q This was two years ago?

A That is correct.

Q You have had many cases since then?

A I have had a number of complicated cases since then, yes, and I was involved at that time in other complicated cases.

Q As you sit there now, can you tell us of any particular memorandum that you use to refresh your recollection?

A No, sir.

MR. ROSENTHAL: I have no further questions.

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Rizzo, I show you Government's Exhibit 174 for identification.

What is that, sir?

A It is a memorandum of conference.

Q And whose handwriting is it in, if you recognize it?

A Special Agent Ayres.

Q And is there a date on the memorandum of conference?

A October 21, 1971.

Q Please look at the date again.

A September 21, 1971, I am sorry.

Q Is your handwriting anywhere on that page, sir?

A Yes, sir.

Q Where is it on that page?

A It is the bottom of the page, the page No. 1 on the bottom here.

Q I would like you to read that memorandum, Mr. Rizzo.

MR. BRILL: To himself?

Q To yourself, Mr. Rizzo.

A Yes?

Q I don't know if I asked you this question, I am sorry if I am repeating myself, Mr. Rizzo, but whose handwriting is that in?

A Special Agent Ayres.

Q After reading that memorandum does that refresh your recollection --

A Yes.

MR. ROSENTHAL: I will have to object to it, if the Court please. There is no evidence in this case that this man used this memorandum or any other memorandum to refresh his recollection prior to his --

THE COURT: I haven't heard the end of the question. Let me hear the whole question.

Q My question to you, Mr. Rizzo, is, after reading this memorandum, does that refresh your recollection now as to what date you had originally requested Mr. Denti to give you handwriting samples?

A Yes.

MR. ROSENTHAL: That is objected to, if the Court please.

THE COURT: On what ground?

MR. ROSENTHAL: On the ground that the witness has stated that prior to his testimony here that he was testifying from his own recollection.

On the further ground this memorandum, I believe, stated the 21st or 22nd of October -- is that correct?

MR. SILVERMAN: That is not correct. It is September. It is prior to October.

THE COURT: Does that state your whole objection, Mr. Rosenthal?

MR. ROSENTHAL: I will withdraw that portion of the objection.

THE COURT: Well, the portion you did not withdraw is overruled.

Q Does that refresh your recollection as to when --

A Yes.

Q Now, when did you originally request Mr. Denti to sign the names of the payees?

A On September 21, 1971.

Q And on what date did you actually receive handwriting samples from Mr. Denti?

A This is on October 18, 1971.

Q About a month later?

A A month later.

MR.SILVERMAN: Thank you.

I have no further questions, your Honor.

THE COURT: Anything else, gentlemen, of Mr. Rizzo?

MR. BRILL: I have no further questions, your Honor. Thank you.

THE COURT: Mr. Rosenthal?

MR. ROSENTHAL: I just want to look at this for a moment, Judge.

I have no further questions.

THE COURT: All right, Mr. Rizzo, you are excused.

(Witness excused.)

MR. SILVERMAN: Your Honor, my next witness is a gentleman by the name of Conrad Hoffmann. The reason he is not standing outside is that he was supposed to be the first witness on today, and he is a retired man, and couldn't stand up outside, and I sent him back upstairs to wait.

THE COURT: While he is on his way will counsel come to the bench for a minute, please.

(At the side bar.)

THE COURT: Mr. Brill, I have observed Mr. Paterno waving and gesticulating at a lady who I presume is his wife, and also smiling and nodding, et cetera, in the direction of the jury box, and I want him to stop it right now and see that it does not happen any more.

MR. BRILL: Without question. I have not seen it but without question it will be stopped.

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MR. SILVERMAN: I have.

THE COURT: Okay.

(End of side bar.)

C O N R A D H O F F M A N N, a witness called in behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Hoffmann, I would just request one thing of you, sir, to try to keep your voice up so that the people in the back of the jury box and the people at the defense counsel table will be able to hear you.

All right, sir?

A I will try.

Q Mr. Hoffmann, what is your present occupation?

A I am a retired bank official.

Q When did you retire, sir?

A September 14, 1973.

Q Prior to retiring where were you employed?

A Security National Bank.

Q Security National Bank? Has that been the name of the bank as long as you worked at it?

A No. It was formerly the Royal National.

Q Approximately how many years did you serve for

both Royal and Security National Bank?

A Since 1951.

Q Was that continuously until you retired?

A Continuously.

Q Now, when it was Royal National Bank, what was your title with the bank?

A Vice president.

Q And when it became Security National Bank what was your title?

A Assistant vice president.

Q And during the years 1965 through 1970 at what branch of the Royal National Bank did you work at?

A 326 East 149th Street.

Q Mr. Hoffmann, that particular time, during that particular period was it called Royal National Bank or had it become Security?

A Royal National Bank.

Q Mr. Hoffman, as a bank officer at that branch what were your responsibilities during that period of time?

A Well, I was in charge of operations; in other words, handling all of the departments, taking care of our customers, okaying checks, and so forth.

Q Mr. Hoffmann, do you know the difference

between a house check or what they call an inside check?

A Oh, of course.

Q Do you know what that is, sir?

A Yes.

Q Could you explain to the jury what a house check is or inside check?

A A check drawn on one of our customers at our office.

Q That is a check of someone who is a client at your bank?

A Correct.

Q Are you familiar with the firm known as Paterno & Sons, Inc.?

A I know the account.

Q Did they have an account at Royal National Bank?

A Right.

Q What type of account did they have?

A Commercial checking account, running pretty high balances, a hundred thousand dollars.

Q Was there a bank procedure or policy during the period while you were an officer - in other words, during 1965 to 1970 - for cashing checks at the bank?

A Yes, there was.

Q What was the bank policy during the period 1965

through 1970 for cashing checks?

A Well, on a check of a thousand dollars we would contact the customer if a party came in to present a check to be cashed.

Q Now, when you approved a check for cashing would you do anything to the check?

A I would put my initial on it.

Q Well, would the place on the check that you put your initials on serve any purpose?

A Yes, it did.

Q Now, when you put your initials on the front of the check what does that mean?

A That would mean that everything was okay on it; that it would be okay to cash.

Q When you say everything --

A The amount - the amount was good, and so forth.

Q Did that also approve the endorsement on the reverse side of the check?

A That would.

Q Did you ever place your initials on the back of the check?

A Yes, okaying the endorsement.

Q Now when you put your initials on the back of the check did that also approve the amount of the check?

5 pm A The teller would look it up then.

Q Now, I'd like you to go through -- the book is in front of you containing certain checks. I'd like you to look at the following numbers as I call them out, sir: Exhibit 5. They are in numbered order.

A Yes, sir.

Q Now by looking at Exhibit No. 5, the question I am going to ask you as to all these checks and I'd like you to go through them all just to save time -- as to whether or not your initials appear on these checks, No. 5.

A No. 5?

Q Is that a yes, sir?

A Yes, sir, it does.

Q No. 6?

A Yes.

Q No. 9?

A Yes, sir.

Q No. 10?

A Right.

Q No. 11?

A Yes, sir.

Q No. 12?

A Yes.

Q 16?

A No. 16?

Q Yes, sir.

A No, sir.

Q Not 16?

A That was 16?

Q Yes, sir.

A Right; yes.

Q No. 18?

A Yes, sir.

Q No. 19?

A Yes.

Q 20?

A Yes.

Q 21?

A Yes.

Q 22?

A Yes.

Q 23?

A Yes.

Q 25?

A Yes.

Q 27?

A Yes.

Q 28?

A Yes.

Q 30?

A Yes.

Q 33?

A Yes.

Q 35?

A Yes.

Q 37?

A Yes.

Q 40?

A Yes.

Q 44?

A 44?

Q Yes,sir.

A Yes.

Q 48?

A Yes.

Q 47?

A Yes.

Q And 48?

A Yes.

Q Did you approve all of these checks that I have read out where you signified the word "yes," did you approve those checks for cashing?

A I did.

Q And what are the names of the five different payees on these checks?

THE COURT: Well, isn't that material in evidence?

MR. SILVERMAN: All right, your Honor. I will skip that. I will withdraw that.

Q Mr. Hoffmann, do you know an individual by the name of John Aurrichio?

A John Aurrichio; no, sir.

Q Do you know an individual by the name of Anthony Ferrotta?

A No, sir.

Q Do you know an individual by the name of Thomas Tuccella?

A No, sir.

Q Do you know an individual by the name of Arthur Lazravitch?

A No, sir.

Q Do you know an individual by the name of Michael Catenzaro?

A No, sir.

Q Do you recall if any of the names that I have just given you, any of those individuals, had an account

during the period of 1965 through 1970 at the branch where you were an officer?

A I would say they didn't have any accounts with us.

Q Do you recall cashing, approving these checks for cashing?

A Well, my initial is on them, so I had to approve them.

Q Do you recall what any of the people looked like who presented these checks for cashing?

A No, sir, I do not.

Q Do you recallwhat type of attire any of these people were wearing that presented these checks for cashing?

A I would say they were attired in working clothes.

Q Do you know the defendant George Denti?

A Pardon?

Q Do you know the defendant George Denti?

A Yes, I do.

Q Do you know the defendant Michael Paterno?

A Yes, I do.

Q And how do you know these two defendants?

A As bank customers.

Q And is that through the account of Paterno & Sons, Inc.?

A That is right.

Q Have you ever met Mr. Paterno?

A Yes, sir, I have met Mr. Paterno.

Q And have you ever met Mr. Denti?

A Yes, sir, I did.

Q Approximately, Mr. Hoffmann, during the period of 1965 to 1970, how often did you speak to the defendant George Denti?

A Well, maybe once a month while these checks were being cashed.

Q Now, could you describe for the Court and the jury, please, the circumstances around your approving these checks for cashing?

A Well, Mr. Denti would call me up and tell me that check was being sent over to the bank payable to so and so and for X number of dollars and to cash it.

Q Now, how soon after you received the telephone call from Mr. Denti giving you the name of the payee and the amount of the check would someone come into the bank to present that check?

A Well, I don't know just how long but it would be the same day.

Q Now, these people who came in and presented these checks for cashing, did you require them to show identification?

A No, sir, I did not.

Q Now, how is that in relation to the procedure of the bank at that period of time?

MR. ROSENTHAL: It's objected to if the Court please.

THE COURT: Yes, I don't think the bank procedure in general is relevant.

MR. SILVERMAN: Excuse me, your Honor.

THE COURT: I don't think it's relevant.

MR. SILVERMAN: Could I ask one other question and rephrase it maybe differently.

Q Mr. Hoffmann, during that particular period of time, was there a bank procedure where a check was presented in excess of $100 to an officer for cashing --

MR. ROSENTHAL: That's objected to if the Court please.

THE COURT: I don't see why it's relevant.

MR. SILVERMAN: Would our Honor want this at the side bar?

THE COURT: Yes.

(At the side bar)

THE COURT: I told the jury we were going to stop at 4:30 so I guess we are going to have to stop in a couple of minutes.

Do you gentlemen think you would have long cross examination?

MR. BRILL: I have a few questions, your Honor, not many.

THE COURT: Maybe you can try to finish with him.

MR. SILVERMAN: Your Honor, the bank policy at that time was that if any check in excess of $100 was presented for cashing that the bank officer would require identification from the person presenting the check and the eestimony that I expect to elicit from Mr. Hoffmann is the reason why in these particular cases he did not require identification.

THE COURT: Which is?

MR. SILVERMAN: Which is because Mr. Dinti, the maker of the check or the person who represents the maker of the check, had called to approve the cashing of the check and that one of the responsibilities, was to call to the maker or speak to the maker of the check as to whether or not the check was good.

THE COURT: I will allow it.

MR. BRILL: Respectfully except.

MR.ROSENTHAL: Except.

(In open court.)

Q Mr. Hoffmann, during the period of time in question, 1965 through 1970, was there a bank procedure as to require identification for the cashing of checks in excess of a hundred dollars?

A Yes, there was.

Q What was the bank policy?

A Well, to okay whatever identification that they would give, chauffeur's license or something similar to that.

Q How did it come about as to these checks that you did not require from the people presenting the checks?

MR. ROSENTHAL: That's objected to, if the Court please, how it came about.

THE COURT: No, I will allow it.

Q You may answer that question.

A Only because one of the officers of the corporation authorized it to be done so.

Q And which officer was that, sir?

A Mr. Denti.

Q Mr. Hoffman, I'd like you to flip over to check No. 45, please. Are there any particular markings that appear on that particular check that do not appear on any

of the other checks that you have identified?

MR. ROSENTHAL: I will object, if your Honor please. They are in evidence.

I say they speak for themselves.

THE COURT: Well, what marking do you want to call to the attention --

MR. SILVERMAN: Certification, your Honor.

MR.ROSENTHAL: I have no objection. We don't have them by those numbers and I don't know what they are referring to.

THE COURT: Is there a certification on them?

A Yes, sir.

Q Did you approve the certification?

A I signed it officially.

Q Do you recall the circumstances around your approval of that particular check?

MR. ROSENTHAL: Now, if your Honor please, the witness did not say he approved it. He said he merely signed the certification and I think they connote two different things.

MR.SILVERMAN: I will change the question, your Honor.

Q Will you please describe the circumstances around your signing of the certification mark on that particular

check?

A Only that our tellers don't have authorization to sign a check over $2500. They would certify it but they wouldn't sign it and then it had to be signed by an officer.

Q What is the amount of that check?

A $3,063.03.

Q Do you recall the person who presented that check for cashing?

A I wouldn't have seen the person.

Q Mr. Hoffmann, other than the five names of the five payees that I have just mentioned to you in the checks that you have just seen, other than those five names, did you approve any other checks for cashing of the corporate cnecks of Paterno & Sons, Inc.?

A Not to my recollection.

Q Did you ever receive any telephone calls from Mr. Denti requesting that you approve for cashing checks other than the chexks that are before you?

A No, sir.

Q Now, when the checks were presented to you for approval, were they already endorsed or did the person presenting them sign in your presence?

A To my recollection they were already endorsed.

Q Did you ever approve for cashing more than one check on the same day for the same payee?

A I don't think so.

Q Now, Mr. Hoffmann, did you appear in this matter and testify before the grand jury?

A Yes, sir, I did.

Q Now, prior to your appearance before the grand jury, did you have a conversation with Mr. Paterno involving these checks?

A Yes I did.

Q Now, prior to your appearance before the grand jury did you have a conversation with Mr. Denti concerning these checks?

A What was the former question? I thought you said Mr. Denti at that time.

Q My first question was as to whether or not you had a conversation with Mr. Paterno.

A Oh, no, I did not.

Q Prior to your appearance before the grand jury, did you have a conversation with Mr. Denti concerning these checks?

A Yes, sir.

Q So you did not have a conversation with Mr. Paterno?

A No, sir, I did not.

Q Now, do you recall when this conversation took place?

A It was prior to -- I think it was shortly after it was first subpoenaed.

Q And it was before the grand jury appearance?

A Before I was in front of the grand jury, yes.

Q And do you recall where the converstion took place?

A I was having lunch in a restaurant and Mr. Denti came in.

Q And did you speak to him in the restaurant?

A Yes, I did.

Q Where were you seated in the restaurant when Mr. Denti first came in?

A I was seated at the bar having a sandwich.

Q And did youhave a conversation with Mr. Denti seated at this bar where you were having a sandwich?

A No, we sat at a little table there.

Q Now, at this conversation was there anyone else present?

A Well, it was close to the bar, but not right alongside of us, I would say no.

Q At this conversation what did you say to Mr. Denti and what did Mr. Denti say to you?

A Well, I told him that the IRS will be checking on these checks and what was it all about?

And Mr. Denti told me these were legitimate checks and there was no problem.

Q Did he tell you at thattime what type of expenses these checks were issued for?

A He said these were for trucking bills.

Q Now, after your grand jury appearance, did you have a conversation with Mr. Denti?

A Yes, I did.

Q Was that conversation also in regard to these checks?

A Yes, it was.

Q Do you recall where this conversation took place?

A Well, only that I had -- this was after I had appeared in the grand jury.

Where it took place?

Q Yes, sir.

A I believe in the bank.

Q And do you recall what you said to Mr. Denti and what Mr. Denti said to you during that conversation?

A Well, I told Mr. Denti what I had said with regards to identifying these checks and I told him that I had received the calls from him and he agreed.

MR. SILVERMAN: I have no further questions, your Honor.

THE COURT: Now, I said 4:30. If anybody will be disrupted by staying further we will stop now. It might be efficient if we could stay until 5 at the latest and perhaps then we will finish with Mr. Hoffmann.

Is there anybody who can't do that?

Then let us proceed with cross examination, Mr. Brill.

MR. BRILL: I will be very brief, Judge.

THE COURT: I don't want to rush anybody. You take as long as you need but it seems to me we may be able to manage.

CROSS EXAMINATION

BY MR. BRILL:

Q Mr. Hoffmann, I think you misspoke in response to one of the questions put to you by the prosecutor, and I think you corrected it.

You were asked whether you ever spoke to Mr. Paterno about these checks.

A Yes, I changed it that I had not spoken to him.

Q You never spoke to him?

A Never over the phone.

I have spoken to him face-to-face but never over the

phone.

Q With respect to these checks?

A No, nothing with respect to these checks.

Q At any time did you ever speak to him with respect to the checks?

A Never.

MR. BRILL: Thank you.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Now, Mr. Hoffmann, did you ever conspire with Michael Paterno or George Denti to aid and assist Paterno & Sons, Inc. to evade and defeat any part of their income tax justly due to the United States of America?

A I did not.

Q And did you, sir, okay or authorize cashing of checks so that Paterno & Sons, George Denti and Michael or Mike Paterno could aid and assist Paterno & Sons in avoding and evading taces justly due to the United States of America?

A I would not have okayed them.

Q And no one ever discussed any such thing with you, did they?

A No.

Q Or even hinted of any such thing to you? Did they?

A No.

Q And what you did was a normal accommodation of a bank officer to a comparatively valuable bank customer, is that correct?

A That is right.

Q And Paterno & Sons were a comparatively valuable bank customer, weren't they?

A That they were.

Q Now, you don't actually know whether or not George Denti was an officer of Paterno & Sons in the years '65, '66 or '67, do you, sir?

A I believe he was an officer.

Q Do you know if there are any records at the Royal National Bank -- is that the name of it, Royal National?

A Royal National. There would be resolutions if he was an officer, he would appear on it.

Q Have you consulted them recently?

A Pardon?

Q Have you consulted the resolutions and the records of the bank recently?

A No, sir, I have not.

Q And is it possible that you just assumed that Mr. Denti was an officer because of the fact that he managed the office of Paterno & Sons?

A That could be.

Q So as far as you know he was not an authorized signator on checks?

A I knew he was not an authorized signator.

MR. ROSENTHAL: I have no further questions.

THE COURT: Anything else?

MR. SILVERMAN: No, your Honor.

THE COURT: All right, Mr. Hoffmann.

(Witness excused.)

THE COURT: I think we will stop for the day and let us plan to resume, ladies and gentlemen, at 10 o'clock tomorrow.

(Adjourned to February 8, 1974, at 10:00 a.m.)

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United States of America
v.
Michael Paterno, George
Denti and Paterno & Sons, Inc.

73 Cr. 419

New York, February 8, 1974
10:00 a.m.

- - -

(Trial resumed.)

- - -

(In open court; jury present.)

THE COURT: Are we ready?

MR. SILVERMAN: Your Honor, I am calling one of my witnesses out of order. I have told Mr. Brill and Mr. Rosenthal. I am calling him because he does not feel well and I want to put him on and let him go home.

THE COURT: I take it there is no objection?

MR. BRILL: No.

MR. ROSENTHAL: No.

THE COURT: All right, have him come in.

J O H N F. T A G L I E R I, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Taglieri, I would just request that you keep

your voice up so that the people in the back of the jury box and the people at the defense counsel table will be able to hear you.

A Yes.

Q Will you state your full name, sir?

A John F. Taglieri.

Q By whom are you employed, sir?

A United States Post Office Department.

Q How long have you been employed at the Post Office?

A As a letter carrier approximately 15 years.

Q And where are you presently assigned, sir?

A The Huntington Post Office.

Q What is your actual position with the Post Office?

A I am a letter carrier.

Q And are you assigned to a particular route?

A Yes, sir.

Q What is the name or number of that route?

A My route number is City 35.

Q How long have you been assigned to this route 35?

A Approximately nine years now.

Q Now, on that route is there an address 800 West Jericho Turnpike?

A Yes, there is.

Q Is it located on the north side or the south side

of Jericho Turnpike?

A The south side of Jericho Turnpike.

Q Is there an address in your route numbered 800 East Jericho Turnpike?

A No, sir.

Q Are you familiar with that address, No 800 Jericho Turnpike?

A The only addresses I know is either east or west. In my route it is West Jericho Turnpike.

Q Could you please describe this structure located at 800 West Jericho Turnpike?

A It is a two-story building. The lower section is occupied by the Cold Spring Enterprises, which is Saab Motors; they sell new cars and service.

Q Now, Mr. Taglieri, when you first became assigned to this particular route, do you recall the names of the tenants who occupied the premises 800 West Jericho Turnpike at the time when you were first assigned to this route?

A Well, one of them was Cold Spring Enterprises.

Q That is the Saab Agency?

A That is the Saab Motors. The other is Cold Spring Instrument, which has moved. Insight Media, which has moved also; ABM Graphics, which has moved; and there might

have been one or two more, a few more, I should say, but offhand I don't recall those that had moved out, all of them.

Q Now, during the time that you were a mailman letter carrier at that location, what were the names of the tenants who occupied the premises located at 800 West Jericho Turnpike?

A At the present time?

Q Yes.

A At the present time there is Finest --

MR. BRILL: Excuse me, the present time is immaterial, your Honor.

MR SILVERMAN: I will rephrase the question:

Q During the time that you were a mailman, during the period 1965 until 1970, and even if they are still tenants now, what are the names of the tenants who occupied the premises during the period 1965 to 1970?

A Well, there would be Cold Spring Instrument; Insight Media; ABM Graphics; Finest Realty; Syosset Realty and Cold Spring Enterprises, which is Saab Motors.

Q During the period 1965 through 1970 do you recall during that particular period receiving any mail addressed to John Aurrichio?

A Yes, I do.

Q Listen, I will say it again. This is just to refresh your recollection, sir --

MR. BRILL: He didn't indicate he needed refreshment.

THE COURT: Yes, I don't understand that, Mr. Silverman.

Q Mr. Taglieri, in what year do you recall receiving a letter addressed to John Aurrichio?

A I guess in 1972 it was, the time not long before -- I guess in 1972 it was.

Q Do you recall approximately what month in 1972?

A Probably towards the latter part of the year.

Q Mr. Taglieri, was this the only occasion or were there other occaions when you received a letter addressed to a John Aurrichio?

A That is the only one I had seen, that one letter I had seen.

Q And what did you --

THE COURT: I don't understand the inquiry. Addressed to John Aurrichio at what address?

MR. SILVERMAN: At the 800 West Jericho Turnpike address.

THE COURT: That is what you are talking about?

MR. SILVERMAN: Yes.

THE COURT: Okay.

Q Now do you recall what you did with the letter that was addressed to John Aurrichio in the year 1972 that was addressed to that address?

A I had marked "addressee unknown," dated it, put my initials on it and returned it to the Nixie clerk.

Q How did it come about, sir, that you recall the name of John Aurrichio?

A It just happens I know the Aurrichio family in Huntington; I delivered to Mrs. Aurrichio who lived on my route at the time; I also delivered to the daughter who was married to a friend of mine who was at that time on my route, and I also know the sons. One is a police lieutenant in Huntington; the other is a patrolman in Huntington, and Pete is in contracting, and so is Joe, and that is all the Aurrichio family, and that is the only reason why that particular name came to my mind.

Q While you were a postman that covered the address 800 West Jericho Turnpike, do you recall any tenant in these premises by the name of John Aurrichio?

A There was never any at 800 West Jericho Turnpike, John Aurrichio.

MR.SILVERMAN: Thank you.

CROSS EXAMINATION

BY MR. BRILL:

Q Mr. Taglieri, is there another reason why you remembered the return of that letter marked by you, as you say, or stamped "Addressee Unknown"?

A Well, I don't know of any John Aurrichio in Huntington.

Q Is there another reason why besides those you have enumerated?

A The only reason I had remembered it was because of the name Aurrichio, and I happen to know the family. Other than that I would have had no real reason to remember it.

Q Well, as you were responding to the question as to the receipt of mail in 1972 addressed to John Aurrichio at 800 West Jericho Turnpike, you said, in substance, something about it was not long before, and you did not finish the sentence.

Do you want to finish that sentence now?

A Well,if you will read it back to me.

THE COURT: Ask another question, Mr.Brill.

MR. BRILL: All right, sir.

Q Was there something occurred at or about the time or shortly after the time that you say you recall receiving

a letter addressed to a John Aurrichio at 800 West Jericho Turnpike?

A Well, it wasn't much longer after that when I spoke to two of the agents that came to my office, and we happened to be talking, and they were asking me questions pertaining to certain mail within the area on my route.

Q Now, were you in fact visited in 1972, on or about September 13th, by Mr. Ayres and Mr. Rizzo at the premises 800 West Jericho Turnpike?

A I spoke to them at my post office office.

Q At your post office?

A Yes.

Q Do you recognize Mr. Ayres here now?

A Right there, yes.

Q And you have seen Mr. Rizzo here this morning?

A Yes, sir.

Q Is it because of that conversation with them on or about September 13, 1972 that you recall receiving a letter which you returned, as you said, "Addressee Unknown" some time?

A If I am not mistaken it was just about a few weeks prior to that that I did see that letter; I would say three or four or five weeks prior to that, speaking to Mr. Ayres and Mr. Rizzo, that I had seen the letter.

Q And was that letter the subject matter of conversation between yourself and Mr. Ayres and Mr. Rizzo at the Huntington Post Office?

A It wasn't only that. He asked me a number of other questions at that particular time.

Q No. Was that particular letter the subject of conversation between yourself, Mr. Ayres and Mr. Rizzo?

A Well, it was part of it, I would say, yes.

Q It was?

A Yes.

Q Now, do you remember that at that time you signed an affidavit --

MR. BRILL: May we have this marked for identification, please. We might as well mark the original, your Honor.

(Defendants' Exhibit G was marked for identification.)

Q I show you Defendants' Exhibit G for identification and ask you to tell us if it bears your signature?

A Yes, sir, it does.

Q And did you sign and swear to it before Mr. Ayres in the presence of Mr. Rizzo on September 13, 1972?

A Yes, sir, I did.

Q And was that the time that you had a conversation

with Mr. Ayres and Mr. Rizzo about the letter that you say was returned "Addressee Unknown"?

A Yes.

Q Would you be good enough to look at Exhibit G and tell us whether there is anything in it that makes any reference to that part of your conversation with either Mr. Ayres or Mr. Rizzo?

A Yes, at line 5 here.

Q I beg your pardon?

A Line 5.

MR. SILVERMAN: You mean No. 5.

THE WITNESS: No. 5, I am sorry.

Q I am sorry, I don't understand you --

MR.SILVERMAN: The number is 5, and then 6 --

MR. BRILL: Please. The witness said paragraph 5?

Right?

THE WITNESS: And 6.

Q And 6?

A Yes.

Q Did you see that paper which you have, Exhibit G for identification, before you testified here or before you took the stand?

A I have seen this before, yes.

Q When did you last see it?

A Last week I think it was.

Q At Mr. Silverman's office?

A Yes.

Q Was Mr. Ayres or Mr. Rizzo present?

A Yes.

Q And in their presence did you discuss the conversation that you had with them on September 13, 1972 at the Huntington Station?

A We spoke about that, yes, sir.

Q And did you discuss with them the source from which that letter came?

A Who sent it, sir?

Q Yes.

A They asked me if I recall who sent it, but I couldn't recall who sent it.

Q Were you shown the letter at that time with the stamp or writing "Addressee Unknown"?

A No.

Q At any time since the time that you say you first saw it and caused it to be returned to the sender, did you ever see it again after that?

A No.

Q At no time?

A No, not that I recall.

Q And you have no idea as to who the sender was?

A No.

Q Were you specifically asked about having received a letter shortly prior to the visit of Mr. Ayres and Mr. Rizzo to you?

A I was asked by Mr. Rizzo and Mr. Ayres when they met me at the Post Office, yes.

Q If you received the letter which you returned because of addressee unknown?

A They at that time asked me if I had seen any mail for that particular party, and at the moment I couldn't think of it, and then when I started to think back I did recall afterwards receiving a letter and marking it "Addressee Unknown."

Q And they asked you if you had seen that, did they not?

A They did ask me if I had seen that.

Q And it was after that that you recall that you had seen it?

A Yes.

MR. BRILL: Will your Honor indulge me a moment?

THE COURT: Yes.

MR. BRILL: I have no further questions.

MR. ROSENTHAL: I have only one or two.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Taglieri, as you sit there now do you recall whether or not there was actually any return address or an address or name and address of any sender of the letter that you say you returned?

A I can't say whether there was or not because I don't recall that.

Q You do not recall?

A My only job is to see if the letter belongs to the particular parties on my route, who it goes to. Who it came from I have nothing to do with.

Q And if there were no name or address for a sender, in the normal course of events in the Post Office where you stamped or returned mail as "Addressee Unknown," what would happen to that?

A That letter would go to the dead letter center. First it would go to the Nixie clerk in my office. From there it would be sent to the dead letter center.

Q And the dead letter office would eventually open it?

A From what I gather in the Post Office Department --

MR. SILVERMAN: Objection, your Honor. If he

knows.

Q Do you know the routine of the Post Office Department with respect to dead letters?

A As far as I know, it just goes to the dead letter center, and then there they take care of it and try to get it back to its original owner.

MR. BRILL: Are you finished?

MR. ROSENTHAL: Yes.

MR. BRILL: Will your Honor indulge me? I meant to ask another question or so.

CROSS EXAMINATION

BY MR. BRILL:

Q You told me on direct examination about a number of Aurrichios whom you know.

A Yes.

Q Did you tell that to Mr. Ayres and Mr. Rizzo in September of 1972?

A Whether I did then or not I don't recall, but I did say that the name John Aurrichio did sound familiar to me.

Q You are now referring to the one letter that you returned, right?

A Yes.

Q Will you look at Exhibit G for identification and tell us whether there is any reference in your

affidavit to any other Aurrichio than the one concerning whom you say you returned the letter "Addressee Unknown"?

A No, not in this period.

Q I beg your pardon?

A Not in this, no.

MR. BRILL: Thank you; that is all.

THE COURT: Anything else?

MR. SILVERMAN: No redirect.

THE COURT: Allright, Mr. Taglieri.

(Witness excused.)

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MR. SILVERMAN: Mr. Marino, your Honor. I will call him out of order since he is the other postman.

V I N C E N T M A R I N O , called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Marino, could I just ask you one favor, sir, that you keep your voice up so the people in the back of the jury and people at the defense table will be able to hear your answers.

A Yes, sir.

Q What is your full name, sir?

A Vincent Marino.

Q By whom are you employed, Mr. Marino?

A United States Post Office.

Q And how long have you been with the post office?

A Approximately 13 years.

Q And where are you presently assigned, sir?

A Elmont Post Office, Elmont branch of the Floral Park Post Office.

Q Is that on Long Island?

A Yes, sir.

Q What is your position with the post office, sir?

A I am a mailman, carrier.

Q Are you assigned, sir, to a particular route?

A Yes, sir.

Q And what is the name or number of that route?

A Route 325 Elmont.

Q How long, sir, have you been assigned to that particular route?

A Going on nine years.

Q Does that route include an address known as 479 Hempstead Turnpike?

A Yes, sir.

Q Could you please describe the building or structure located at 479 Hempstead Turnpike?

A It's a two-story business building, strictly a business.

Q Do you recall, sir, when you were first assigned to that particular route, the names of the tenants who occupied that particular structure?

A Well, Childcraft Photo, Stratford Photo, Klein Associates, Lipman, who was the owner of the building, deceased now, Greenblatt Associates, it's an

insurance outfit, and Philip Gold, printing outfit, printers.

Q Are you familiar with a company by the name of Tulsa Air Conditioning?

A Tulsa Air Conditioning moved in later, after I was on the route.

Q Areyou familiar -- was there at that location at any time a beauty parlor, sir?

A That beauty parlor was there also. It moved out.

Q Now what are the names of the tenants who occupied the bulding of those premises 479 Hempstead Turnpike during the period of 1965 through 1970?

A Tulsa and the -- beauty parlor was in when Childcraft suspended and they moved out and they took over that one spot. That's the only change I can think of. Tulsa moved in where Childcraft used to have an office.

Q Other than the tenants that you previously named, were there any other new tenants that moved in during that particular period of time?

A No, sir.

Q Now, during the period 1965 through 1970, do you recall delivering any mail to an Arthur Lazravitch

at 479 Hempstead Turnpike?

A No, sir.

Q Do you recall any tenant at that address by the name of Arthur Lazravitch?

A No, sir.

THE COURT: All right, cross-examination.

CROSS-EXAMINATION

BY MR. BRILL:

Q Mr. Marino, when did you last look at the premises which you have been describing?

A Would you repeat that?

Q When did you last go to the premises which you have been describing and to which you have been delivering mail?

A When?

Q Yes.

A Tuesday.

Q That's this week?

A Yes, sir.

Q And you had occasion to refresh your recollection as to the names of all the tenants in the building?

MR. SILVERMAN: Objection, your Honor.

A No.

MR. SILVERMAN: The questions that were on

direct examination were related to the period 1965 to 1970. The names of the tenants who presently occupy the building is not relevant to that.

MR. BRILL: Cross-examination.

THE COURT: Well, I know, but with the prior letter carrier you took the position that the present occupants were not relevant. I suppose we ought to derive a principle from your wisdom. Objection sustained.

Q Were you interviewed by any representatives of the Internal Revenue Service?

A Yes, sir.

Q Can you recall when that occurred?

A Approximately about two years ago.

Q Does it help you if I tell you that it was on or about September 13, 1972?

A That's about right.

Q Did that interview take place at the premises 479 Hempstead Turnpike?

A No, actually it was behind the premises at the parking lot.

Q And did you at that time -- who were you interviewed by at that time?

A By two agents.

Q Do you recall their names?

A Mr. Reilly, I think, and Mr. Rizzo. The gentleman there.

Q Mr. Ayres?

A Yes, and Mr. Rizzo.

Q Not Mr. Reilly, Mr. Ayres, who sits next to Mr. Silverman?

A Right.

Q And did you at that time with them go through the premises?

A No, sir.

Q Behind the building, you described to them what you in essence have told us here today?

A Yes, sir.

Q Since that time, have you been interviewed by either Mr. Rizzo or Mr. Ayres?

A A week ago.

Q And who else was present?

A Another carrier and Mr. Silverman.

Q When you say another letter carrier, do you have in mind Mr. Taglieri?

A Yes.

Q Was he there at the same time that you were being questioned?

A Yes, sir.

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Q You were both questioned?

A Yes, sir.

Q In the presence of each other?

A Yes.

Q And names were mentioned about who were or were not tenants in each of the buildings to which you and Mr. Taglieri have been delivering mail?

A No, sir.

Q No names menitoned at all?

A We were just questioned, brought in to tell us that the trial was coming up, that we have to be witnesses, and then to go over our statement that we had made two years ago.

Q And did you do that?

A Yes, sir. Then we left.

Q And after you looked at the statement or whatever it was that you signed a couple of years ago, did you discuss it with anybody?

A No, sir. Then they dismissed us and we went home.

Q Did you ever talk about your testimony with Mr. Silverman before you took the stand today?

A A week ago, as I said, we came in --

Q Was he present at the time?

A Yes, he was.

Q In addition to Mr. Rizzo and Mr. Ayres?

A Yes.

Q And were you reminded then that you made the statement on or about September 13, 1972 in the back of the premises 479 Hempstead Turnpike?

A Yes, sir. I didn't have to be reminded, when two treasury men come up to you, that's something you don't forget very easily.

MR. BRILL: You don't forget. All right, thank you. I have no further questions.

THE COURT: Mr. Rosenthal?

CROSS-EXAMINATION

BY MR. ROSENTHAL:

Q During the period 1965 through 1970, did you know the name of every person employed by the various concerns that occupied those premises?

A The name of every person?

Q Yes.

A No, every business, yes, sir.

Q You knew the business?

A Right, not the person.

Q You didn't know the individuals that were working for or owning the businesses, is that correct?

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A Yes, most of the owners I knew, I had contact with most of the owners.

Q But you are not certain whether it was all of them?

A Well, not to the --

Q Now, is there more than one building with respect to 479 Hempstead?

A No, sir.

Q Well, there is a building --

A One building.

Q One building. Well, there is a parking lot in conjunction with that building, isn't there?

A Yes, sir.

Q And isn't there another building immediately adjacent to or in back of the parking lot, with an archway or something of that sort?

A Yes, sir, there is an archway that goes in the back and then there's tenants that live -- that have the back entrance.

Q Is that also 479?

A Yes, sir.

Q And the tenants that you have listed or given to us were in the two different buildings?

A No, it's not two buildings, it's one building,

merl0 Marino-cross

it's just an entrance. Like the building is -- how can you explain it, one part of the building will go in so and then the back part will go in so around and then there's -- it's the same building. One stairway.

Q Mr. Marino, are you familiar with the procedures of the post office with respect to the dead letter office?

A Yes, sir.

Q And what are they?

A Well, if we get a letter which we have no knowledge of, we will hold it for approximately ten days and if we don't find anywhere where it can be delivered we mark it undeliverable as addressed and send it off, and if it has a forwarding address it would go back to the people that sent it, if not, it would go in like you said the dead letter office. How long it stays there, I have no idea.

Q How long it stays there you have no idea?

A I have no idea.

MR. ROSENTHAL: I have no other questions.

MR. BRILL: I have one question, with your Honor's permission.

THE COURT: All right.

merll Marino-cross

CROSS-EXAMINATION

BY MR. BRILL:

Q At the premises which we have been discussing, Mr. Marino, is there a general contractor located there or was there one during the years that you have been asked about?

A A general contracotr?

Q Yes.

A No, sir.

Q Does the name Frank L. Marino, contracting, mean anything to you at that address?

A Not at that address. They have 481 Hempstead Turnpike.

Q Is that the other side of the archway?

A It abuts the building, in other words. It's not the same building.

Q And it's a general contractor?

A Yes, sir.

Q And he is not related to you?

A No, sir.

MR. BRILL: All right, thank vou very much.

MR. SILVERMAN: No redirect.

THE COURT: All right, thank vou, Mr. Marino.

(Witness excused)

THE COURT: Are you getting your next witness?

MR. SILVERMAN: Your Honor, at this time I would like to offer as Government's Exhibits 84, 85, 86, and possibly 87 -- well, up to 86 at this time -- a stipulation signed by myself, Mr. Brill and Mr. Rosenthal.

MR. BRILL: That is consented to, your Honor.

THE COURT: Do you want to read it?

MR. SILVERMAN: Yes, I would like to read it to the jury.

(Government's Exhibits 84, 85 and 86 were received in evidence.)

MR. BRILL: We will consent to 87 as well, your Honor. We are about to sign it.

(Government's Exhibit 87 was received in evidence.)

MR. SILVERMAN: I believe it is permissible, since the language in the first section of the stipulations are all the same, that I just read the bodies of each one of the stipulations.

THE COURT: I believe so.

Is that agreeable with you gentlemen?

MR. BRILL: Yes.

MR. SILVERMAN: Yes.

Exhibit 84. The stipulation says:

"that if Vincent Rongo were called as a witness, he would testify as follows:

"1. He has been employed by the U.S. Post Office as a letter carrier for the past twenty years.

"2. He delivered mail during the year 1965 through 1971 to Halsey St. which is a one block street with the lowest numbered address being 2400 Halsey Street.

"3. There was no building numbered 1855 Halsey St., Bronx, N.Y. during the years 1965 through 1971."

85:

"that if Joseph DeFazio were called as a witness, he would testify as follows:

"1. He has been employed by the U.S. Post Office as a letter carrier for the past 25 years.

"2. He delivered mail during the years 1964 through 1970 to Allerton Ave., Bronx, N.Y.

"3. There was no building numbered 1167 Allerton Ave., Bronx, N.Y. during the years 1964-1970."

86:

"that if Robert Gelston and Walter Jacobs were called as witnesses, they would testify as follows:

"1. Robert Gelston

"a. He has been employed by the United States Post Office as a letter carrier for the past nineteen

years.

"b. He delivered mail during the years 1968 through 1971 to 89th Avenue and 90th Avenue on 153rd Street.

"c. There was no building numbered 89-94 153rd Street, Jamaica during the years 1968 through 1971.

"2. Walter Jacobs

"a. He has been employed by the United States Post Office as a letter carrier for the past ten years.

"b. He delivered mail during the years 1967 and 1968 to 89th Avenue and 90th Avenue on 153rd Street.

"c. There was no building numbered 89-94 153rd Street, Jamaica during the years 1967 and 1968."

87:

"that if Peter A. Kanakos were called as a witness, he would testify as follows:

"1. He has been employed by the United States Post Office as a letter carrier since January, 1960.

"2. From July 1967 to February 1972 he delivered mail to 800 East Jericho Turnpike, Huntington, New York having replaced the former carrier who passed away.

"3. The only tenants located at this building while he delivered mail there were Giblin Organ and French Shriner Shoe Store who replaced Giblin Organ as tenants."

Your Honor, the government will call

Gaeton J. Andretta as the next witness.

G A E T O N J. A N D R E T T A, called as a witness by the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Andretta, may I please ask you to keep your voice up so that the people in the back of the room will be able to hear you?

A Yes.

Q Will you please state your full name?

A Gaeton J. Andretta.

Q And where are you presently employed?

A Liberty National Bank.

Q Where is that located?

A In Stamford, Connecticut.

Q Prior to being employed by this particular bank, sir, had you been employed by another bank?

A Yes.

Q And in what bank were you employed?

A Security National Bank, successor to Royal National Bank of New York.

Q During what period of time were you employed by the Security and the Royal National Banks?

A From 1951 to 1972.

Q And while you were with Royal National Bank what was your position, sir?

A I started off as a clerk and rose to vice president.

Q And when the bank then became Security National Bank what was your position with that bank?

A Vice president.

Q During the years 1963 to 1968 to which branch of the Royal National Bank were you assigned?

A 149th Street.

Q And what were your responsibilities during that particular period of time, sir?

A Operations Officer, Data Processing Officer, Platform Assistant.

Q As a Platform Assistant what type of work did you do, sir?

A Taking care of customers; opened up accounts -- the usual work that is performed on a platform in any bank.

Q Do you know the defendants Michael Paterno and George Denti?

A Yes, I do.

Q How did it come about that you first met them, sir?

A Well, I met Mr. Denti when I was transferred to the 187th Street branch.

Q I cannot hear you.

(Answer read.)

Q And when did you meet Mr. Paterno?

A 19 -- I guess it was -- I should say about 1960 or some time there -- I don't know exactly when.

Q For how many years, sir, do you know Mr. Paterno?

A About 14 -- 14 years ago.

Q And for how many years do you know Mr. Denti?

A Approximately twenty years.

Q Now what has been your relationship with Mr. Paterno during the last several years?

A Business relationship.

Q Prior to your responsibilities as the -- I will withdraw that.

Aside from your responsibilities as a bank officer when you were with the bank did you have a financial relationship with Michael Paterno?

A Yes, I did.

Q Will you please describe to the Court and the jury the nature of that financial relationship?

A I got together a certain sum of money and loaned it to Mr. Paterno.

Q How much was that sum of money?

A $135,000.

Q And who were the people who put up the money for this loan?

A From my wife and myself, my mother and my father and other friends of mine -- Peter Solimine; Mr. and Mrs. Gino DeAngelis and Mario and Domenick DeAngelis.

Q Mr. Andretta, was this loan secured by any notes or was it an oral agreement?

A No, sir, we had notes.

Q And what was the percentage of interest on these notes?

A Simple interest, 9 percent a year payable quarterly.

Q Was this loan satisfied or unsatisfied?

A 30,000 has been repaid.

Q I did not hear it.

(Answer read.)

Q So approximately $105,000 is outstanding?

A That is correct.

Q What has been your relationship, if any, with Mr. Denti, during this 20-year period?

A Both a business and a personal relationship.

Q Have you been to his home?

A Yes, sir.

Q Has he been to your home?

A Yes, sir.

Q Do your families socialize?

A We have been out -- yes.

Q Have you ever been on a vacation with Mr. Denti?

A Yes. I spent a weekend at his summer home with my family.

Q And when did that take place?

A 1971 -- the summerof '71.

Q Now included in your responsibilities as a bank officer, Mr. Andretta, did you also approve the cashing of checks?

A Yes, I did.

Q I would like to show you, sir, Government's Exhibits 1, 2, 3, 8, 13, 14, 15, 17 and 31, and ask you if you recognize those checks, sir (handing).

A (After examining) Yes, sir, all but 17.

Q How do you recognize those checks, sir?

A My initials.

Q During the period that you were assigned to the Royal National Bank located at 149th Street was there a procedure or a bank policy on the cashing of checks?

A Yes.

Q What was the bank policy or procedure, sir?

A For presentment by whom, sir?

Q By presenting of a check in the amounts that you have before you.

A Will you please clarify "presented"? By the maker or the payee?

Q Presented by the payee of the check.

A The procedure would be to obtain an identification, to check to see if the check is correct, and that there are no stop payments on it, and that the balances are good.

Q When you say that you would check the identification, whose identification would you check?

A The payee.

Q Would that be the person presenting the check?

A That is correct.

Q Would the place on the check that you put your initials, would that have any significance, sir?

A Yes.

Q If the initials appear on the face of the check what would that mean?

A That means the check is in order for encashment -- the teller would cash it.

Q And what if your initials appear only the reverse side of the check, the back of the check?

A That means the initial would be for the endorser, and the check has to be checked by the teller for the balance.

Q Who is the signator of those checks, the authorized signator?

A Michael Paterno.

Q What are the names of the payees of these checks?

MR. BRILL: They are all in evidence, your Honor.

Q To save time, are the names of the payees Aurrichio, Lazravitch and Tuccella?

A (After examining) Yes, sir.

Q Did any of these individuals whose names are also on those checks in front of you have an account at Royal National Bank during the period when you were assigned there, sir?

A Not to my knowledge, sir.

Q Do you know any of these payees?

A No, sir.

Q Do you recall what any of these payees looked like, sir?

A Yes, just this one (indicating).

Q Which one, sir?

A John Aurrichio.

Q How did it come about that you recall what Mr. Aurrichio looks like?

A By his name.

Q What significance does his name have to you?

A To me? It is the name of a very famous cheese which I happen to like.

Q What did this Mr. John Aurrichio look like, sir? Do you recall?

A I recall that he was a tall, grayish blond man.

Q How was he dressed?

A In a suit, well dressed.

Q Do you recall what the other two payees looked like?

A No, sir, I don't.

Q Do you recall how they were dressed?

A To the best of my recollection they were workmen or -- jackets -- I mean I really couldn't remember exactly what they were.

Q And on how many occasions did you cash a check payable to a John Aurrichio?

A Four times, sir.

Q And do you recall the circumstances under which you met Mr. John Aurrichio?

A I received a call from George Denti that John Aurrichio was coming in to cash a check.

Q I did not hear that.

(Answer read.)

Q When you received this call from George Denti, is that the George Denti who is in the courtroom?

A Yes, sir.

Q What did he tell you when he called?

A The exact wording I don't remember.

Q What was the substance?

A "Take care of the man, cash the check for him; take care of him".

Q At the time of the telephone call didhe tell you the name of the payee?

A Yes, sir.

Q And at the time of the telephone call, sir, did he tell you the amount of the check?

A Yes, sir.

Q And approximately how long after you received the call from Mr. George Denti did the payee come in and present this check?

A Oh, I don't recall -- it would be the same day. It was the same day, but I don't recall the time now -- timewise.

Q The same day, was it?

A Yes.

Q Mr. Andretta, on the occasions when you approved

these checks for signature for signing, were the endorsements already on the checksor not on the checks?

A They were on the checks.

Q Was there ever an occasion when any of these payees came into the bank when Mr. Denti had not called you?

A To the best of my recollection, once.

Q What happened on that occasion, sir?

A I called George Denti.

Q And what was the substance of that conversation?

A "Aurrichio is in here. Is it okay to cash the check?" -- or something to that effect. The exact wording I don't recall.

Q Did he give you the amount of the check?

A Yes, I verified the amount of the check.

Q Now by looking at the checks, Mr. Andretta, can you determine whether or not any of those checks were cashed on the same day?

MR. BRILL: The same day as what?

THE COURT: The same day as what, Mr. Brill asks?

MR. SILVERMAN: The same day -- the same date.

THE COURT: The same date as what -- as the making of the check?

MR. SILVERMAN: No, the same day as any of the other checks.

THE COURT: Oh, I see.

MR. BRILL: Excuse me.

THE COURT: Well, look, they are in evidence. If you submit they are, you can tell the jury. Ask another question.

BY MR. SILVERMAN:

Q Mr. Andretta, other than the checks that you have before you did you approve for cashing any corporate checks of Paterno & Sons, Inc. -- did you approve the cashing of any other checks other than the checks before you?

A Of Paterno & Sons, Inc.?

Q Yes, of the corporate account of Paterno & Sons, Inc.

A I may have.

Q Do you recall under what circumstances?

A You mean any other check?

Q Any other checks did you approve for cashing, other than the ones before you?

A It's possible. Sometimes his workers used to come in with their payroll checks.

Q Other than payroll checks or corporate expense checks did you ever approve for cashing any other corporate checks?

A Not to my knowledge.

Q Now with the checks in front of you, were they cashed or deposited?

A These were cashed.

Q Mr. Andretta, did you testify on this matter before the grand jury?

A Yes, I did.

Q Prior to your appearance before the grand jury did you have a conversation with defendant Michael Paterno?

A Yes, I did.

Q And prior to your appearance before the grand jury did you have a conversation with the defendant George Denti?

A Yes, I did.

Q And did you have any conversation where both of them were present?

A Yes, sir.

Q And do you recall where that conversation took place?

A Yes, in a restaurant in City Island.

Q And do you recall when this conversation took place?

A Shortly after I received a subpoena for the grand jury.

Q At this conversation that we are referring to, Mr. Andretta, what did you say to Mr. Paterno and Mr. Denti

and what did they individually say to you?

MR. BRILL: Could they be separated, your Honor? What did he say to each and what did each say to him?

THE COURT: Well, identify the substance of what was said and who was speaking.

THE WITNESS: The substance of the whole conversation was that I received a subpoena, you know, what is this all about -- that was more or less the entire substance.

Q And what did you say to them and what did they say to you, Mr. Andretta?

A They told me it was in reference to an IRS investigation involving checks payable to truckers which were cashed that had performed work for them.

Q Did they say --

MR.BRILL: I object to the plural, your Honor. I think he should separate them. Let us find out what each said.

Q What did Mr. Paterno say to you with regard to the existence or non-existence of these truckers?

A I don't remember what each particular one said, you know, word for word.

THE COURT: No, give us the substance.

THE WITNESS: The substance was that these checks

represented checks payable to truckers who had performed work for them.

Q They were both present at this conversation.

A Yes.

Q At that time did you discuss whether or not you had approved these checks for cashing?

A Yes.

Q And what was the substance of the conversation relating to you approving the checks for cashing?

A I don't remember the exact terminology, the exact wording and what not, but it came -- but I reminded George that he called me and, what is the story on these fellows, and so on and so forth, and it was more or less like that. It is so long ago I don't remember the exact wording of what was said.

Q After your grand jury appearance --

A Yes.

Q -- and before appearing in court today did you have an opportunity to have a conversation with defendant George Denti?

A Yes -- repeat that question.

(Question read.)

A Yes.

Q Sir, did that conversation occur in the last

several months?

A I saw George since then a few times, yes.

Q Did you have a conversation with him near your office in Connecticut?

A Yes.

Q And where did the conversation take place, sir?

A At a diner across from the bank up on the street.

Q And where in Connecticut is the bank located?

A Stamford.

Q And who was present at this conversation, sir?

A Just George and myself.

Q And what was said at that conversation? What did you say to Mr. Denti and what did Mr. Denti say to you?

MR. BRILL: May we have a limiting instruction with respect to this, your Honor? This is a few months ago.

THE COURT: Yes. What Mr. Brill is asking that I instruct the jury that since this involves only Mr. Denti it affects only him, and it is binding only on him and not on Mr. Paterno or the corporation.

Q Will you tell us the substance of that conversation that you had with Mr. Denti at that time?

A Mr. Denti was very depressed, very excited, angry and --

MR. ROSENTHAL: I object to the characterization.

Q Mr. Andretta, just tell us the substance, please, sir.

A He told me he had been indicted. He told me he blamed the bank for it. He did not elaborate on it but he was angry and excited and very depressed --

THE COURT: No, just say what he said, Mr. Andretta.

THE WITNESS: The exact words I can't --

THE COURT: Say the substance of what he said.

THE WITNESS: That is about the substance.

Q After he said that he blamed the bank for it what did you say to him?

A I tried to calm him down.

Q What did he say to you in relation to the telephone calls that you testified to that he had with you with relation to these checks?

MR. ROSENTHAL: I object to the leading at this time, if your Honor please. I think this witness is capable of relating the conversation without prodding and leading and suggestion.

MR. SILVERMAN: Your Honor --

THE COURT: I will allow it.

(Question read by the reporter.)

A At this meeting at the --

Q Yes.

A It wasn't even brought up.

Q It wasn't even brought up.

A No, sir.

Q Was the existence of the truckers discussed at this meeting, sir?

A Yes.

Q And what did Mr. Denti say with relation to the existence or non-existence of these truckers?

A The same thing, that they existed, that those checks were payable to truckers that performed work for Paterno & Sons.

Q At that particular meeting, sir, did Mr. Denti tell you why he blamed the bank for being indicted?

A No.

MR. SILVERMAN: I have no further questions.

CROSS EXAMINATION

BY MR. BRILL:

Q Mr. Andretta, we have never had a conversation before, have we?

A No, sir.

Q You told us about a loan on direct examination that you said you made to Michael Paterno in the amount of $135,000.

A Yes.

Q Are you still receiving interest on that loan?

A Yes, sir. It is paid up up until February 10th.

Q Of this year?

A Yes, sir.

Q And has that loan at any time been in default?

A Well, the notes -- they were one year notes and then payable -- and then on demand after that. Interest is kept plain -- not physically with the notes.

Q Have you made a demand for the payment of the balance?

A No, sir.

Q Now in addition to that transaction did you have another financial transaction with Paterno & Sons, Inc. involving the use of any bonds --

A Yes.

Q -- to be deposited as security?

A Yes, sir.

Q Were those your bonds?

A No, sir.

Q Were they bonds that belonged to a friend of yours --

A Yes, sir.

Q -- or a client of yours?

A Yes, sir.

Q Did you make those bonds available to Paterno & Sons, Inc.?

A Yes, sir.

Q To be deposited in New Windsor and Haverstraw so that --

A I don't know where they were deposited.

Q -- the percentages of the moneys owed by the municipalities concerned could be related to Paterno & Sons, Inc.?

MR. SILVERMAN: Objection, your Honor. Mr. Brill is now testifying. The witness has already said he did not know where they were deposited.

A I did not know where they were deposited but I knew why they were deposited.

Q Tell us why they were deposited?

A To ~~tell~~ ahe him out on his retainers.

Q What do you mean by "retainers"?

A Well, the way I understood it a certain amount of moneys are withheld from payments by the municipalities.

Q Retained by whom?

A The state or city municipality.

Q And in these instances in order to effect the release of this retained money by the municipality

or state agency concerned bonds were required to be put up?

A I don't know if there was money to be released at the time.

Q Well,don't you as a matter of fact know those bonds were in fact deposited in certain municipalities?

A That is what I was told, sir.

Q Did you ever ascertain the contrary?

A I don't understand your question.

Q Did you ever find out otherwise?

A Yes, once.

Q That they were not deposited with municipalities?

A Once when Mr. Paterno released bonds, and Mr. Denti asked me if he could use them as collateral for a loan with Security National Bank for a very short period of time, and I said yes.

Q That is another transaction?

A That is another transaction.

Q Unrelated to the first?

A That is correct.

Q The first transaction involved how much in bonds that belonged to a friend of yours that you advanced to be deposited with municipalities?

A A par value of $230,000.

Q And isn't it true that all but $70,000 of those bonds have actually physically been returned?

A Definitely, sir.

Q Did you charge a fee for any service in connection with procuring those bonds?

A Absolutely not.

Q Did you do it because you trusted and believed Mike Paterno?

A Yes, sir.

Q And George Denti?

A Yes, sir.

Q Did they at any time in respect to any transaction that you had with either of them default in their responsibility to you or the bank?

A No, sir.

Q Did you say on any of the occasions when you were interviewed either by agents of the Internal Revenue Service or before a grand jury or in a conference with other persons, including representatives of the Internal Revenue Service or the Department of Justice, that you recalled a description of another of the payees beyond the tall grayish blond man?

A Vaguely.

Q Vaguely?

A Yes.

Q Did you describe such a person as being a stocky, swarthy looking individual?

A I believe I did --

Q Yes?

A -- meaning a weather-beaten type, that is what I meant.

Q Did you describe him as being a person who looked like a man of considerable strength, a strong man?

A I don't remember.

Q One who did physical work?

A I really don't remember.

Q Or kept fit by exercise?

A I really don't remember.

Q Now, you only appeared before a grand jury in connection with this case once, isn't that true?

A That is correct.

Q And that was on August 28, 1972?

A Is that the correct date?

MR. BRILL: Isn't that the correct date?

MR. SILVERMAN: I don't believe it is the correct date.

Q At that time was there an attorney present in the grand jury room representing you?

A No, sir.

MR. SILVERMAN: Objection, your Honor.

THE COURT: That is sustained, Mr. Brill.

Now, you know the rule is that no attorney is present in the grand jury room representing a witness.

MR. BRILL: That is not what I meant to ask.

THE COURT: Well, ask a proper question.

MR. BRILL: I didn't mean to do that.

Q Did you have an attorney who represented you

sitting in the anteroom to the grand jury room?

A No, sir.

MR. BRILL: All right, that is what I intended to ask, your Honor.

Q At that time were you employed by the Security National Bank?

A No, sir.

Q Or by its predecessor, the Royal Bank?

A No, sir.

Q Or by a present employer --

A My present employer.

Q -- the Liberty National Bank?

A Yes.

Q In what capacity were you employed by the Liberty National Bank?

A Executive vice-president.

Q Executive vice-president?

A Yes.

Q In order to hold the position of an officer, including executive vice-president with a national bank, is it a prerequisite to obtain the approval of any governmental agency or official?

A Three.

Q Will you give us the names of the agencies or

officials?

A The comptroller of the Currency, the Justice Department and the IRS. I believe in the IRS there are forms that you file, a section in the financial report where you have to put your last three years information returns in there. It is a composite form.

Q Now up to and including August 24, 1972 was the position which you were holding then contingent upon your obtaining approval from these agencies?

A No, sir. I don't know the exact date of approval but I had received approval.

Q You had received approval --

A I had at that time.

Q -- prior to August 24, 1972?

A The exact date I can't recall. I believe so.

Q Do you remember when you appeared before the grand jury you said -- and I am reading from page 2 of Exhibit 3508, where in response to this question you made this answer:

"Q By whom are you employed" -- and this is directly after --

A Oh, yes, now I recall. It was subsequent to the grand jury.

Q In other words, when you appeared before the grand

jury you had not yet been approved?

A That is correct.

Q You were awaiting approval?

A Awaiting approval.

Q And the tenure of your job was contingent or tentative?

A That is correct. Thank you for making me remember.

Q Well, I was just trying to refresh your recollection.

Now you remember, do you not, that when you were before the grand jury you were asked if you ever approved loans for Paterno?

A That is correct.

Q And specifically you were questioned about business relationship?

A That is right, the bank loans.

Q That is what you understood at the time?

A Yes, sir.

Q And you said no, sir?

A That is correct. I had no loaning authority.

Q And you had no activity or connection with any loans which the bank made or may have made to Paterno & Sons, Inc.?

A Not really, no. I was more or less the liaison

man on the account. I didn't approve any applications, but if necessary papers were needed, or a note was needed, or some documents were needed, and what not, instead of going through various departments certain people are assigned as liaison people with the accounts --

Q You mean as expeditors?

A Call it as you wish. The actual approval, the actual write-up or what-not is not done by me.

Q But the approval of any loan was not anything in which you participated?

A The actual approval, no, sir.

Q And you so told the grand jury?

A Oh, yes.

I could clarify that even more.

Q I beg your pardon?

A I could clarify that even more.

Q Well, go ahead.

A The approval of Mr. Paterno's loans, because of his high credit --

Q When you say Mr. Paterno's loans, are you referring to --

A Paterno & Sons, Inc.

Q The corporation?

A Yes.

Q All right.

A They were approved primarily by the main office, the second vice presidents or the presidents and processed by the vice president in charge of the branch.

Q And they would be submitted to or approved by loan committee, would they not?

A Yes, that all went through the loan committee because of his high credit line.

Q Do you recall what was his high credit line?

A Overall?

Q Yes.

A With equipment and unsecured, approximately half a million.

Q So that when you made the loan you testified you made you felt secure that you would be repaid?

A Oh, yes, sir.

Q And nothing has happened to shake your --

A To the contrary?

Q Yes.

A No, sir.

Q Now you have identified certain checks here today, and I think you said that you talked to somebody -- all right, you have already said that. I don't have to go back over it.

Now after you appeared before the grand jury --

THE WITNESS: May we close the window? I am freezing

MR. BRILL: Would this be a good time to air the courtroom?

THE COURT: No, let's finish your cross. I assume you are almost done.

MR. BRILL: No, I think I have about 15 minutes yet.

THE COURT: Finish it.

MR. BRILL: All right.

BY MR. BRILL:

Q When you were before the grand jury did you say at any time anything about Mike Paterno in connection with the cashing of any of these checks that you described today?

A Anything about?

Q Yes. Did you mention his name in connection with the cashing of any of the checks to which you referred today?

A Would you please rephrase your question, Mr. Brill? I don't understand it.

Q All right, I will try.

Do you recall that before the grand jury you described that you cashed or approved the cashing of

certain checks?

A That is correct.

Q And you told us today that you did that after talking with your friend George Denti?

A That is correct.

Q Now, did you tell the grand jury that you cashed these checks after talking with Mike Paterno?

A I don't recall my testimony.

Q You have no recollection at all?

A I don't remember.

Q Prior to coming here today were you interviewed by the prosecutor or any member of the prosecution's staff, including special agents of the Internal Revenue or other agents of any other governmental agencies, Mr. Ayres, Mr. Ruzzo?

A In what area?

Q With respect to the testimony that you would be giving?

A I was -- yes, I was interviewed by Mr. Silverman.

Q When was that?

A Last month -- I am sorry, this is February. December.

Q And at that time did you review the testimony which you would give today?

A It was like a dry run, yes.

Q What does that mean?

A Certain questions were asked -- he asked me certain questions and I answered him.

Q Were they, in substance, the same questions that he asked you today?

A No -- some of them, yes.

Q Apart from the transactions concerning the loans which you say you made personally to Mike Paterno and the advance of the bonds that belonged to a friend of yours, everything else that you reviewed was what you testified to today, isn't that true?

A No, sir. The bonds I told him about at a later date. The loans I told him on that date.

Q In December?

A Yes.

Q What was the later date in which you again talked with Mr. Silverman?

A The second week in January.

Q Approximately two or three weeks ago?

A A month ago.

Q All right.

At that time did you have a dry run, as you put it, of the testimony which you gave here today?

A Yes, sir.

Q Who else was present on that date in January?

A Mr. Ayres and Mr. Rizzo.

Q Who else was present on the date in December 1970 when you had the dry run?

A Mr. Ayres

Q Were you shown anything besides the checks on either of those occasions? Were you shown any documents besides the checks which you have identified here today?

A No, sir.

Q Did you read any of the statements that you made or the grand jury testimony that you gave?

A My copies, yes, sir.

Q Yes?

A Yes.

Q Your copies?

A Yes.

Q Copies which had been furnished to you and which you took home?

A Yes, sir.

Q When were you furnished those copies?

A A long time ago, sir.

Q Can you give us approximately the date when that occurred?

A March 1973.

Q Now, was that at a time when you made an affidavit?

A Yes, sir.

Q Approximately March 15, 1973?

A Pardon?

Q Approximately March 15, 1973?

A Yes, sir.

Q And at that time were you furnished a copy of that affidavit?

A Yes, sir.

Q A copy of the grand jury testimony?

A No, sir.

Q When were you furnished with a copy of the grand jury testimony?

A I never was.

Q I thought you said a little while ago, I may have been mistaken, that you were furnished with copies of your grand jury testimony.

A No.

Q A copy of your grant jury testimony?

A I never said that, sir.

Q All right, tell us what you were furnished with so that there will be no mistake about this.

A A copy of the affidavit and a copy of a memorandum of a prior meeting at the Federal Plaza Building which my attorney requested.

Q At the time of your interviews in December and January, were you permitted to read your grand jury testimony?

A No, sir.

Q Was any of it read to you?

A No, sir.

Q Were you reminded of anything?

A Yes, sir.

Q Were you reminded that in your grand jury testimony, on August 24, 1972, about whether your memory was refreshed concerning who got the cash on the checks that were presented by persons, two of whom you have identified for us?

A Would you repeat that question, sir?

THE COURT: No, ask a different one, Mr. Brill. Repeating it won't make it --

MR. BRILL: All right.

A I didn't understand it, Judge.

THE COURT: You won't understand it the next time, either.

THE WITNESS: I don't understand.

THE COURT: It's all right, he will ask you a different question. He can put a much better one.

MR. BRILL: I will try, Judge.

Q Do you remember being asked whether your memory is refreshed concerning who got the cash out of all these checks you approved?

A I still don't understand your question.

Q At page 25 of 3508, were you asked this

question --

A Are you referring to my grand jury testimony?

Q Yes, I am.

A Would you read it then, sir?

Q That's what I am about to do with his Honor's permission.

"Q I am asking you whether your memory is refreshed concerning who got the cash out of all these checks you approved?

"A Mr. Burke" -- he was the man who questioned you --

"A Mr. Burke, this man I remember coming in. I remember this one. The other two I can't pinpoint the identity of."

Do you remember that?

A Yes, that comes to my mind now. But you asked me a question about --

THE COURT: He just asked you if you remembered that. And I want to know why you asked that.

MR. BRILL: Because I have another question.

THE COURT: Ask another one because the limited purpose for which you may read grand jury is well known to you. It didn't become apparent to me yet.

Q Prior to being asked that question, were you

asked questions as to whether --

THE COURT: No, Mr. Brill, if you have questions that you want to ask him about, read them. If they are permissible kinds of questions and answers for you to read. Don't ask by paraphrasing.

MR. BRILL: I want to jog his memory first to see if he can answer.

THE COURT: I told you how to jog his memory. If you are going to refer to grand jury testimony, we have already experienced the difficulty of your paraphrases, read it, if it's proper to read, and ask him about it.

MR. BRILL: I respectfully except.

Could we come to the side bar, Judge?

THE COURT: All right, why don't you take about 20 minutes, ladies and gentlemen.

(Jury left the courtroom)

THE COURT: Yes, Mr. Brill. You don't have to come to the side bar.

MR. BRILL: Is it all right for Mr. Paterno to go make a phone call?

THE COURT: If it's all right.

MR. ROSENTHAL: And give consent to Mr. Denti, also, your Honor, while we are conferring.

mer5 Andretta-cross

THE COURT: All right, go ahead.

MR. BRILL: Does your Honor have a copy of 3508?

THE COURT: No.

MR. BRILL: Do you have an extra copy of 3508? Could the witness go someplace else or go across the hall?

THE COURT: All right.

MR. SILVERMAN: Do you want to use my copy, your Honor?

THE COURT: If Mr. Brill thinks I need it, yes.

Mr. Brill, you must know what page you have in mind.

MR. BRILL: I do have.

THE COURT: All right, then let's proceed.

MR. BRILL: I just referred to page 24.

THE COURT: Yes?

MR. SILVERMAN: 25, I believe.

MR. BRILL: 25, at the bottom of that page, and just before that question, there is a portion of a question which is put to this witness, Mr. Andretta. The question beginning at line 19."

I do not believe it proper for me to ask

or read.

THE COURT: Then don't read it.

MR. BRILL: I don't propose to.

THE COURT: Then what's your problem?

MR. BRILL: My problem is that the question which I did read and about which I did ask follows the last part of that which begins at line 23 at page 24, and I think that that is a quetion which I have -- that portion I should have a right to read.

THE COURT: Which? What do you want to read?

MR. BRILL: "You realize the seriousness of the situation?

"A I certainly do, sir."

THE COURT: Why do you want to read it? Does it show a prior inconsistency? What's the legitimacy of your reading it at all?

MR. BRILL: It relates to the questions which are put concerning the identification of these persons which had previously been made in the course of an interview had on September 21, 1971. That's Exhibit 3507.

Mr. Andretta persists in adhering to the answers which he made with respect to the identification.

He is then told after a series of questions by the prosecutor that you realize the seriousness of the situation. He says "I do" and after that he immediately asked:

"Q I am asking you whether your memory is refreshed concerning who got the cash out of all these checks you approved?"

And his response I have read as your Honor sees it is there.

THE COURT: I don't understand. There is no consistency in this witness' testimony. What are you trying to bring out?

MR. BRILL: I think this inconsistency -- I think it's the kind of pressure and prosecutorial conduct which is designed to bring about an answer which for several pages before that the prosecutor is seeking to obtain.

THE COURT: I don't agree with you at all. And besides he has given the testimony here. You may not use grand jury testimony in that way. I believe you know it. If you want to ask him whether he was under any pressure, because I may ask him this myself, whether he thought he had to lie in order to get the approvals needed to be an officer of a national bank,

you may ask him that. And I think in light of what you have already asked him, you should.

MR. BRILL: I intend to.

THE COURT: All right.

MR. BRILL: That's the thrust of what I am driving at.

THE COURT: Ask him, whether he thought it would help him to lie in order to get to be an officer of the bank, with whom, IRS, controller of the currency or Justice. If that's what you are driving at, ask him.

All right, we will take a short recess. I want to call a sentence.

(Recess)

(Jury not present.)

MR. SILVERMAN: Before the jury comes in, your Honor, I would like to note for the record that it will not be necessary to hold that hearing that I originally requested involving the production of those checks. They were produced this morning, your Honor, and I have not given Mr. Brill a full receipt for them at this time -- the agent is now preparing the receipt.

In lieu of that, your Honor, one of the witnesses who I was going to put on this morning, I will put on out of turn this afternoon because I would like to have an opportunity to discuss those checks with that witness.

THE COURT: Okay.

MR. BRILL: Who is that?

MR. SILVERMAN: Weissenberg.

(Jury present.)

MR. BRILL: Before I resume, your Honor, may I look at those exhibits before Mr. Andretta for a second?

THE COURT: Yes.

(The witness hands to Mr. Brill.)

MR. BRILL: It may eliminate part of my expected cross.

(Mr. Brill examines.)

CROSS EXAMINATION CONTINUED

BY MR. BRILL:

Q Mr. Andretta, at the recess we were talking about your appearance before the grand jury in 1972.

Did you during the course of your appearance and testifying there at that time feel under any pressure?

A What do you mean by "pressure", Mr. Brill?

Q Well, did you feel that you were being pressured with respect to the questions and answers that were put to you?

A Well, at that time I was in a very highly anxiety state. I had not been well for the last year and a half and I was very nervous.

Q Did it occur to you at that time that you might get the approval of the agencies which you described --

A Oh, no, sir.

Q -- necessary for your job?

A Oh, no, sir.

MR. BRILL: Allright, I have no further questions.

A No, sir.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Andretta, I think you testified a short while ago that after speaking with revenue agents and after

appearing before the grand jury, and also after appearing down at 120 Church Street were you asked questions and gave answers before a stenographer, that you met with George Denti?

A Yes, sir.

Q On several occasions, is that right?

A Yes, sir.

Q Now who arranged those meetings or called for those meetings?

A Either George would call me or I would call him.

Q And sometimes you wrote him a note, didn't you?

A That is correct.

Q Asking him to get in touch with you.

A That is right.

Q And in one of the notes you even told him not to go into any detail on the telephone because you were fearful that your telephone might be tapped?

A I didn't write that.

Q Well, you indicated that in the note, did you not?

A (No response.)

Q Well, I will show you this -- is this in your handwriting (handing)?

A (After examining) Yes, sir.

Q And will you look at the date of the envelope

that is attached to it, the postmark date?

A (After examining) Yes, sir.

Q And do you recall now --

MR. ROSENTHAL: May I have it marked for identification.

(Defendants' Exhibit H was marked for identification.)

A May I see that again, please.

Q Certainly (handing).

A (After examining) All right.

MR.ROSENTHAL: Mr. Silverman, I am going to offer it in evidence (handing).

(Mr. Silverman examines.)

MR. ROSENTHAL: I offer it in evidence.

THE COURT: Any objection?

MR.SILVERMAN: No.

(Defendants' Exhibit H was received in evidence.)

BY MR. ROSENTHAL:

Q Now, Mr. Andretta, in this note, which is attached to an envelope postmarked March 21, 1973 you wrote, among other things "But do not call me" -- is that correct?

A Yes.

Q And you underscored it.

A That's correct.

Q And you as well added a postcript "Do not discuss this on telephone. Will explain" -- is that right?

A That is right.

MR. ROSENTHAL: May I pass the note to the jury, your Honor?

THE COURT: Surely.

(Mr. Rosenthal hands to the jury.)

BY MR. ROSENTHAL:

Q Mr. Andretta, when you saw George Denti -- I will withdraw that.

This was written shortly after you had given a statement to the Internal Revenue Service, was it not?

A Is the date correct -- are the dates correct?

Q Well, this was written on the 21st or mailed at least on the 21st --

A Yes, sir.

Q -- of March of 1973?

A Yes, sir.

Q And on the 15th of March of 1973 you had been interviewed and given an affidavit to the Internal Revenue Service --

A Okay.

Q -- is that correct?

A Okay.

Q And if my memory serves me correctly, shortly thereafter I believe you and your wife, or at least you had gone out of the city or out of this area --

A That is right.

Q -- for three or four days of vacation, is that correct?

A That is correct.

Q And as soon as you returned back to this area you sent George this note?

A Right.

Q And you sent him notes on other occasions --

A That is correct.

Q -- arranging appointments.

A That is correct.

Q And when you met Mr. Denti you told him, did you not, that you had reason to believe that you or he was either being followed, or that you -- or that your telephone or his telephone was being tapped?

MR. SILVERMAN: Objection, your Honor.

THE COURT: What is the relevance of that, Mr. Rosenthal?

MR. ROSENTHAL: Well, the relevancy, your Honor, is the pressure that Mr. Andretta was under.

THE COURT: Do you believe it goes to the credibility of his testimony here now?

MR.ROSENTHAL: No, sir.

THE COURT: Well, the objection is sustained.

MR.ROSENTHAL: All right.

THE COURT: That kind of speculation by a witness on what may have been going on with him cannot be relevant to the issues in this lawsuit.

BY MR. ROSENTHAL:

Q Now, Mr. Andretta, calling depositors in the bank or having -- I will withdraw that. I will break it down.

Was there anything unusual about a depositor in the bank calling and saying that a payee, giving his name, will be down to cash a check in such and such an amount, that the check is okay. Was there anything unusual about that?

A No.

Q Now if someone did appear and had a check of size -- I don't mean a $100 check or a $50 check or a $200 check but a check of size, was that anything unusual for you or some other official in the bank telephoning the depositor to make certain that it was a genuine check?

A Repeat that question,Mr. Rosenthal?

Q You told us there was nothing unusual for the depositor to call in advance of somebody coming in to cash

a check?

A It happens.

Q It happens?

A That is correct.

Q Now on how many occasions would it happen in reverse, in that --

A Yes?

Q -- you would initiate the phone call --

A Yes.

Q When I say "you", I mean you as an official of the bank --

A Yes.

Q -- would initiate a phone call to a depositor.

A Yes.

am

Q Now while you were before the grand jury, Mr. Andretta, were you asked to give examplars of your handwriting in respect to the name Anthony Ferrotta?

A If I was asked to give exemplars?

Q Yes.

A Yes, of three different names, three different times. I don't remember which names they were.

Q Well, would this refresh your recollection: Was one of the names Aurrichio, John Aurrichio?

A There were three names they asked me to write. I really don't remember which they were, unless you have them.

Q See if this refreshes your recollection: You had been asked concerning certain checks that you had approved for cashing, is that right?

A Yes.

Q And those checks were in the names of three different payees, were they not?

A Yes.

Q In fact, you have them before you right there, is that correct?

A Oh, I am sorry, yes.

This is one of them, Laz -- Lazravitch. I had to ask him how he spelled it.

Q Lazravitch, Aurrichio and Tuccella, is that correct, sir?

A I believe so. There were three names.

Q Those are the three names, is that right?

A Yes, I believe so.

Q And the names that you were asked to furnish exemplars to the grand jury and to the government of your handwriting of those names were the names of the payees of those checks, were they not?

A To the best of my recollection, yes.

Q And you did?

A Yes.

Q You did it voluntarily?

A Yes.

Q Now when you first spoke to George Denti you advised him, did you not, that the bank had had inquiries from the Internal Revenue Service concerning some check transactions of Paterno & Sons?

A When was this, sir?

Q I say, when you first spoke to him after you became aware of the fact that the IRS had been into the bank or had interviewed some people in the bank - is that right?

A Yes.

Q And you asked George Denti what that was all about?

A Yes.

Q And what was his reply to , if you recall?

A An IRS investigation they had been under. I don't know exactly.

Q Do you recall him telling you that Paterno & Sons were going through an audit by the IRS?

A Yes.

Q And do you recall him telling you, not in these words but in words to this effect or in substance, that he and Mike Paterno and Paterno & Sons had nothing to fear or worry about because their books and records and their accounts were in perfect order?

A In essence.

Q In essence he told you that, did he not?

A Yes.

Q And the many times that you spoke to him after you personally had contact with the IRS agents and special agents, was that basically, in essence, his reply to you concerning these matters?

A Yes, sir.

Q Now, I think you have told us that you know George Denti for approximately 20 years?

A Yes, sir.

Q Your acquaintanceship first was in a business way?

A That is correct.

Q And it then ripened into a social acquaintanceship?

A Yes, on occasion.

Q On occasion?

A Yes.

Q You visited him and his family and he visited you with his family?

A No, sir, George came to my house.

Q George came to your house?

A Yes.

Q But you have met Mrs. Denti?

A Oh, yes.

Q And you have met his children?

A Oh, yes.

Q And George has met your wife?

A Yes, sir.

Q And your family?

A Oh, yes.

Q And you know other people who know George, don't you?

A What?

Q You know other people who know George, don't you?

A Yes.

Q Both in the business world and socially, is that right?

A Yes, I would assume so.

Q Do you know, sir, what the reputation of George Denti is among the people that you know who know him?

A Yes, sir.

MR. SILVERMAN: Your Honor, reutation as to what?

THE COURT: Reputation as to what?

MR.ROSENTHAL: I had not gotten to that when Mr. Silverman stood up. I was about to get to that.

Q Do you know what his reputation is for business integrity and honesty?

A I would say an intelligent businessman; I would say a good home man; I would say an honest man and a very hard working man.

MR. ROSENTHAL: Thank you. I have no other questions.

MR. SILVERMAN: Just two questions on redirect, your Honor.

REDIRECT EXAMINATION

BY MR. SILVRMAN:

Q Mr. Andretta, you testified that other people from other businesses had called you to tell you that

people would be coming in to cash checks at your particular bank, is that correct?

A No, I didn't testify to that. The question was --

Q What was your answer on cross examination as to that subject?

THE COURT: Don't ask him what his answer was; just ask him what the fact is.

Q What is the fact as to that, Mr. Andretta?

A Wasn't the question, do people call the bank -- do customers call the bank and say that they are going to send somebody in to cash the check? My answer was yes, on occasion people do.

THE COURT: You understood that question to mean they are sending the payee?

THE WITNESS: Yes.

THE COURT: The payee?

THE WITNESS: Yes, I understood.

BY MR. SILVERMAN:

Q In this particular procedure, did this happen frequently or infrequently?

A Infrequently.

Q Now other than the checks payable to those payees, that are in front of you, did Mr. Denti call on any other occasion and request that you approve for cashing a corporate

check of Paterno & Sons, Inc.?

THE WITNESS: Please ask me that again. I didn't get that all.

THE COURT: Mr. Reporter, will you please repeat that question.

(Question read.)

A Not to my knowledge.

Q Mr. Andretta, so that one thing is perfectly clear --

MR. BRILL: I can't hear you.

MR. SILVERMAN: Excuse me, Mr. Brill.

Q Mr. Andretta, so that one thing is perfectly clear, approximately when was the first occasion that we ever met?

A December.

Q December of what year, sir?

A 1973.

Q Was that considerably after your grand jury testimony, is that correct?

A Oh, yes.

Q Were you questioned at the grand jury by any assistant in the office that I work in, people that hold the same position as myself?

A Mr. Burke.

Q Did you ever speak to Mr. Friedman?

A Yes, sir.

Q Did you ever meet with Mr. Ayres?

A Yes, sir.

Q Did you ever meet with Mr. Rizzo?

A Yes.

Q Did you ever work with any other agents of the Internal Revenue Service of the United States Department of Justice in relation to this matter?

MR. BRILL: I object to the "work with."

THE COURT: Deal with?

Q Deal with, meet, speak to any other people that work for the United States Department of Justice or the Internal Revenue Service of the Treasury Department?

(Pause.)

Q Yes or no, sir, do you recall any other individuals?

A In relation to?

Q In relation to this investigation.

A No.

Q Mr. Andretta, when you testified before the grand jury were you asked this question and did you give this answer:

"Q By whom are you employed?

"A Well, I am technically unemployed right now.

I left Security National after the merger with Royal National Bank. I have an application with the Comptroller of the Currency. I am awaiting approval."

A That is correct.

Q Did anyone from the United States Department of Justice, from the Internal Revenue Service or the Comptroller of the Currency at any time discuss with you during the course of this investigation your application with any one of those three agencies?

A No, sir.

Q Did anyone at any time suggest to you the answers that you should give in court or before the grand jury or in those affidavits?

A No, sir.

MR.SILVERMAN: I have no further questions.

THE COURT: Any recross?

MR. BRILL: No, your Honor.

Thank you.

THE WITNESS: May I clarify that little note?

THE COURT: Pardon?

THE WITNESS: May I clarify that little note?

THE COURT: Mr. Andretta wants to clarify that little note.

Is there any objection?

MR. SILVERMAN: No objection, your Honor.

MR. ROSENTHAL: I have no objection.

THE WITNESS: The reason why I said "Don't call me," I was on vacation and my wife wasn't well, and I didn't want my family to get upset, that's why.

THE COURT: Anything else of Mr. Andretta?

(No response.)

THE COURT: All right, sir.

(Witness excused.)

THE COURT: While we are waiting for the next witness let me use the 30 seconds to inform the jury if I have not that Tuesday, February 12th and Monday, February 18th are court holidays. So we won't be sitting on those days, and at least one juror, I think, will appreciate having that Monday free, and I hope we won't be much beyond that in any event.

But so you can plan your schedules I give you that information.

J A M E S C A P O S S E L A, called as a witness in behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Capossela, could I please request, sir, that

in response to the questions that you are asked today you just keep your voice up so that the people in the back can hear you, sir?

A Yes.

Q What is your full name, sir?

A James Capossela.

Q Where do you presently reside?

A 119 Nelson Road, Scarsdale, New York.

Q What is your present occupation?

A I am an officer of the Nelstead Trucking Corporation.

Q Where is Nelstead Trucking located?

A Harrison, New York.

Q What type of a business is Nelstead Trucking? What type of work do they do?

A Trucking.

Q What kind of trucking?

A Materials. Asphalt, sandstone, and so forth.

Q During the years 1965 and 1966 were you in business at that time, sir?

A Yes.

Q And under what name did you conduct your business?

A B&C Trucking.

Q What type of work did B&C Trucking do?

A Similar work. Moving earth, mostly.

Q Mostly earth, is that what you said?

A Yes.

Q Whom did you work for? What type of corporations or contractors did you work for during this period?

A Any contractors that would hire the trucks to move earth.

Q Now are you familiar with a contractor known as Paterno & Sons, Inc.?

A Yes.

Q And did you do any subcontracting work for Paterno & Sons?

A Just rental work.

Q By rental work what do you actually mean by that?

A It was by the hour. The trucks were rented by the hour.

Q They were rented to Paterno & Sons, Inc.?

A Right.

Q At what location or locations did you rent trucks to Paterno & Sons, Inc.?

A Well, just one occasion up at Carmel, New York.

Q Approximately when did this occur, sir?

A When?

Q Yes.

A 1965 and 1966.

Q What type of work did you perform for Paterno & Sons, Inc. at Carmel, New York?

A Moving earth from one location to the other.

Q Now, during that particular period of time, where were the B&C offices located?

A In New Rochelle, New York, I think it was.

Q And where did you, during that particular period of time, 1965 to 1966, where did you garage or store your trucks?

A In New Rochelle.

Q Now, in reference to the Carmel site that you worked at for Paterno & Sons, Inc., what did you do with your trucks at the end of the day?

A That particular job?

Q Yes, sir.

A I parked them there.

Q How did it come about, sir, that you parked your trucks at the Carmel site rather than at your garage in New Rochelle?

A Because the distance was too great to be traveling back and forth from New Rochelle to Carmel.

Q Do you know of your own personal knowledge, sir, that the trucks were parked at the Carmel site?

A Yes, they were parked there.

MR. ROSENTHAL: His trucks?

MR. SILVERMAN: His trucks.

Q How do you know they were parked there, sir?

A Because I went up there every morning to make certain that they renting.

Q I didn't hear the last part, I am sorry.

A To make certain that the trucks got started and started to go forthe day.

Q Now, at that particular site, were there any other trucks parked at that site other than your trucks at the time that you worked there?

A The other truck other than mine, the trucks that I had taken up there with me, that didn't belong to me, but I had rented those.

Q Other than the trucks that you either owned or rented for Paterno & Sons at that site, were there any other trucks parked at that site?

A Not that I can remember.

Q Now, in the year 1965, sir, how many trucks did your business own?

A Four or five.

Q And did you ever supply to Paterno & Sons, Inc. more trucks than you actually owned?

A Yes.

Q Now, where did you get the trucks from that you supplied to the Paterno & Sons, Inc., and referring to the trucks that were in addition to the trucks you actually owned? Where did you get those trucks from?

A Through people in the business.

Q Do you recall the names of the people which

youjust described as through the business that supplied you with these trucks?

A Well, I can think of two: Cross County Trucking was one, and Ray Regna was the other, I think.

Q Do you recall a man by the name of Dom DeMarco?

A Mario DeMarco.

Q Mario DeMarco?

A Yes.

Q Did you ever get any trucks from him?

A Yes.

Q Now, with reference to Cross County, do vou recall the name of the man who ran or owned the company?

A Cimino.

Q Did Mr. Cimino drive his own truck or did somebody else drive his truck?

A I think then he was driving his own truck.

Q Now, the other two trucks --

MR. BRILL: Your Honor, I object to the question and move to strike the answer. He thinks. Obviously he is not the best witness for this.

THE COURT: No, I will allow it.

Q In reference to the other two trucks, the DeMarco truck and the Regna truck, did they come with

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drivers or without drivers?

A I think I -- I think again I think I furnished the drivers for those trucks.

THE COURT: When you say you think, are you telling usthe best you can recall?

THE WITNESS: The best I can recall.

THE COURT: All right.

Q Now, during that period of time, sir, when you needed a driver for a truck that came without what we call a chauffeur or a driver, where did you get the drivers to drive these trucks?

A Through the local union.

Q Do you recall the number of the local that you got the truckers from?

A 456.

Q And do you recall what type of union that is?

A It's a Teamster local.

Q And do you know what area, the geographic area in New York or the surrounding areas that that local covers?

A Well, I would say from the New York City line up to around Carmel.

Q Now, to your knowledge, sir, was the Carmel job a union or a non-union job?

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A I don't know.

Q Now, does your company or did your company B&C, during that particular period of time, did you have a contract with Local 456?

A Yes.

Q Now, under the provisions of that contract --

MR. BRILL: I am going to object to this, if your Honor please, this contractual relations may be interesting but I don't think they are relevant to this case.

THE COURT: Why are they relevant?

MR. SILVERMAN: May we have a side bar on this, your Honor?

THE COURT: Yes.

(At the side bar)

MR. SILVERMAN: Your Honor, the questions I am going to be asking of this witness and of the next witness relate to the fact that they both had contracts with the union, that they only supplied union drivers to these particular jobs and that the care that these drivers and shop stewards took to inspect to see whether or not there were union drivers or non-union drivers on this particular job. I will also produce the member from the union who will testify to the fact

that none of the drivers of the five named individuals had contracts with the unions nor were any of those individuals members of any local. He woul- testify that his drivers, and so would the next witness testify, that their drivers were members of the union.

THE COURT: Okay.

MR. BRILL: Respectfully except.

(In open court)

Q Mr. Capossela, I will repeat my question to you.

What were the provisions of the contract that you had with the union in relation to who may be hired at this particular job?

A You couldn't hire -- you asked for the driver and they sent them to you.

Q Are you permitted under the provisions of this contract to hire non-union drivers?

A No.

Q Now, was there anvone responsible at the job site for checking to see whether or not there were union and non-union men working on this particular job?

MR. ROSENTHAL: That's objected to if the Court please.

THE COURT: On what ground?

MR. ROSENTHAL: On the ground that it's not in furtherance of the issues involved here.

THE COURT: I ruled on that at the side bar. Overruled.

A I don't recall any non-union help there.

Q Was there a particular person --

MR. BRILL: I move to strike that answer, if your Honor please, as being non-responsive.

THE COURT: I will allow it.

Q Mr. Capossela, was there any individual who was in charge of checking to see whether or not there were non-union people working at this particular job?

A There should have been a shop steward.

THE COURT: He asked you whether you know there were. If you don't know, just say you don't know.

A I don't know.

Q During the particular period of time of 1965 through 1966, under what name did you bill Paterno & Sons, Inc. for the services that you performed?

A B&C Trucking.

Q Now, in relation to the other companies that you say that you got the trucks from, Cross County, DeMarco and Regna, did you bill Paterno & Sons, Inc. for

them during that period or did they bill separately?

A I don't recall becasue I was there just for maybe three weeks and I left the job. Now, what happened after that, I have no idea.

Q I am talking to you about, sir, during the time when you were still on the job, did you bill for them or --

A I don't remember.

Q Okay. Now, how were you paid by Paterno & Sons, Inc.?

A By check.

Q And what did you do, if anything, with the check that you received from Paterno & Sons, Inc.?

MR. BRILL: That's objected to.

THE COURT: The deed isn't important. The procedure of his getting the check you may bring out but I don't think what he did matters.

MR. SILVERMAN: It's relevant, your Honor, as to the issue as to whether or not he cashed the check or deposited it.

THE COURT: Whathe did is not relevant. You can bring out how he was given the check and what the defendant corporation did, but what he did I am ruling is irrelevant.

Q Do you recall how you received the check from Paterno & Sons, Inc.?

A One of them through the mail and I would say the other -- one check I picked up at his office.

Q Mr. Capossela, I show you Government's Exhibit 108 for identification and ask you if you recognize this exhibit.

A Yes.

Q And what is it, sir?

A It's a notebook I kept.

Q And could you please -- are there any markings in that book for the months of October and November of 1965?

THE COURT: Mr. Silverman,can't you find it?

A I have it here.

THE COURT: You don't know?

A I have it here.

Q Now, by examining --

THE COURT: What's your answer, yes, there are?

THE WITNESS: Yes.

MR. SILVERMAN: Let's offer this Government's Exhibit 108 in evidence.

MR. ROSENTHAL: Whatparticular part are you

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offering?

MR. SILVERMAN: I am offering the book.

MR. BRILL: Could I ask a few preliminary questions on the voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. BRILL:

Q Mr. Capoletti --

A Capossela.

Q I am sorry. This document which is now marked Exhibit 108 for identification, does it relate to more than the work which you said you did at the Carmel job for Paterno & Sons?

A It represents to probably two or three years work.

Q Two or three years work. And actually you said you worked only two or three weeks?

A Yes.

Q Can you pick out the period during which you worked?

A I want to go back.

According to this it looks like October 15 was thefirst day.

Q And until when did you work on this job for

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Paterno?

A This should be the last day, November 17.

MR. BRILL: All right, with respect to those two dates, the pages within this book, I have no objection, your Honor. I object to the rest of it as being irrelevant.

MR. SILVERMAN: Your Honor, the only other section I'd like Mr. Silverman to examine is the first few pages of the book that have telephone numbers on it.

MR. BRILL: I am not interested.

THE COURT: Will you look, because he wants to know whether you might withdraw your objections to that.

I assume that's why you want him to look.

MR. SILVERMAN: Yes, your Honor.

MR. BRILL: I still think they come within the scope of my objection, your Honor.

THE COURT: Why are they relevant?

MR. SILVERMAN: Well --

MR. BRILL: Could we have a side bar on this, your Honor?

THE COURT: He wants to ask a question. Is that what you want to do?

MR. SILVERMAN: Ask Mr. Capossela certain

questions to lay the foundation as to whether I used it.

THE COURT: He is allowed to do that.

MR. SILVERMAN: So the acceptance of the book so far is received in evidence as to the dates he worked.

THE COURT: I will rule on the whole thing at once.

Mr. Rosenthal, I take it you have no other objection?

MR. ROSENTHAL: I have no other objection, your Honor.

TEH COURT: Go ahead.

DIRECT EXAMINATION CONTINUED

BY MR. SILVERMAN:

Q Mr. Capossela, in that book that's before you, Government's Exhibit 108, are there any telephone numbers listed in that book?

A Yes.

Q And did you have occasion to use those telephone numbers?

A Right.

Q For what purpose did you usethe telephone numbers in the front of the book?

A To solicit work.

Q By soliciting work, what do you mean by that,

sir?

A Well, I am in contact with these people that I would do work for.

Q Are the names of DeMarco, Cross County and Regna in front of the book?

A DeMarco is. Cross County is. It's under Cimino's name though. Regna I wouldn't have it.

MR. SILVERMAN: Your Honor, at this time the government seeks to move into evidence the pages with regard to the dates that Mr. Capossela has identified and the telephone number section in the front of the book.

MR. BRILL: I consent to the reception in evidence of those pages from the time he started October 15 to November 17, 1965, but I object to the rest of the book as being irrelevant, and immaterial.

THE COURT: Yes, the first few pages I can't quite see the relevance of.

MR. SILVERMAN: All right.

THE COURT: Do you withdraw them?

MR. SILVERMAN: Yes.

THE COURT: Okay, then the portion which Mr. Brill described, which are those pages which begin with a notation relating to October 15 and end at November 17 are

received and the rest is not.

(Government's Exhibit 108 was received in evidence)

Q Mr. Capossela, other than the three truckers that you have just mentioned, did you ever rent trucks from any other truckers during that particular period of time?

A No.

MR. BRILL: What time?

Q Did you ever hear of a trucker or do vou know of a trucker by the name of John Aurrichio?

MR. BRILL: Objected to as hearsay in view of the length of the question.

THE COURT: Overruled.

Q You may answer the question.

A No, at that time I didn't know, I never heard of him. I just met Mr. Aurrichio yesterday.

Q Do you know of a trucker or have vou ever heard of a trucker by the naem of Thomas Tuccella?

A No.

MR. BRILL: Same objection to the entire line, your Honor.

THE COURT: All right.

Q Do you know a trucker or have vou ever heard of

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a trucker by the name of Arthur Lazravitch?

A No.

Q Do you know of a trucker or have you ever heard of a trucker by the name of Anthony Ferrotta?

A No.

Q And do you know of a trucker or have vou ever heard of a trucker by the nameof Michael Catenzaro?

A No.

Q Did you ever see any trucks with the names of those five individu-ls on the side of them?

MR. BRILL: Tha's objected to.

A I don't remember.

THE COURT: Ididn't hear you.

MR. BRILL: He's answered it.

THE COURT: You withdraw the objection?

MR. SILVERMAN: I have no further questions, your Honor.

THE COURT: All right, Mr. Brill, whv don't you start vour cross-examination.

MR. BRILL: All right, sir. Thank vou.

CROSS-EXAMINATION

BY MR. BRILL:

Q During that period in 1965, between October 15 and November 17, how many trucks did vou own, Mr.

Capossela?

A Four or five.

Q Could it have been three?

A No.

Q You are positive of that?

A I am positive of one thing, I am here.

Q Now, pwrhaps I can help you out. Did you testify before the grand jury on January 9, 1973 with respect to this case?

A Yes.

Q Do you remember being asked the question on page 4 of 3520 with respect to B&C:

"Q In 1965, how many trucks did you have in your trucking business?

"A Three."

A I could have been wrong.

Q You could have been wrong. Could you have been wrong today when you said four or five?

(Witness consults Exhibit 108)

A I had three trucks operating then. I had just bought two other trucks that weren't on the road yet. But I meant wirh relation to the Ferguson job. I owned at the time five trucks.

Q But they didn't have anything to do with the

Carmel job at Paterno & Sons?

A No.

Q During the same period from October 15, 1965 to November 17, 1965, you were working on other jobs as well as the Carmel job for Paterno & Sons, Inc., is that right?

A Yes.

Q And can you tell us how many trucks DeMarco owned?

A No.

Q Can you tell us how many trucks either of the other two names --

A I know Cross County had one.

Q One truck. Did DeMarco have more than one truck?

A I just had one truck there. I don't know how many others he owned.

Q And what was thename of the third company?

A Regna.

Q How do you spell that?

A I have no idea.

Q All right.

How many trucks did you rent from him for this Carmel job?

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A One.

Q Now, when you referred to loads in this book or so much of it as has been received in evidence, do you refer to truckloads or to trucks?

A Truckloads.

Q Truck loads?

A Yes, if it's two separate forms of the job, it's by the load or by the hour. On some occasions it's by the load and on others by the hour.

Q Well, let's take the first page which has been received in evidence from Government's Exhibit 108 for identification under the date 10/5. How many hours of trucking did you put in that day?

MR. SILVERMAN: Objection, your Honor.

A I have no idea.

THE COURT: Wait a second. Under the date 10/5 is not in evidence.

MR. BRILL: 10/15. I beg your Honor's pardon.

Q Where is the first day?

A Right there.

Q 10/15, I am sorry.

10/15. Will you show me where in the book there is a relation to the Paterno job on 10/15?

A Cimino worked for Paterno ten hours, Cross County.

Q That's 10/16?

A Right.

Q You didn't do any work for Paterno and Sons on October 15?

A No. This is how it is -- eight hours.

Q Whose truck did you use for that?

A This was Cimino or Cross County, either one. They are about the same. DeMarco also worked there for eight hours.

Q So you didn't have any of your own trucks on that job?

A No, because I was on a different job.

THE COURT: Mr. Brill, let's suspend. Can you stop at that point?

MR. BRILL: Certainly.

THE COURT: Lunch, ladies and gentlemen. Let's come back at 2:15.

MR. BRILL: May the witness have the usual instructions? Or shall I leave the witness to Mr. Silverman?

THE COURT: You do whatever you like. I don't give the usual instruction. To me it's unusual.

(Luncheon recess)

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AFTERNOON SESSION

2:15 p.m.

(In open court.)

J A M E S C A P O S S E L A, resumed.

THE COURT: Gentlemen, let us plan to suspend about 4:25 today. I have a request from the jury to make sure they get out about 4:30. Okay?

(Jury in the box.)

MR. BRILL: Shall I proceed, sir?

THE COURT: Yes.

MR. BRILL: Thank you.

CROSS EXAMINATION CONTINUED

BY MR. BRILL:

Q Mr. Capossela, with respect to Local 456 is it true that members of that local who were not available for work at a particular time may be replaced by other drivers?

A If they are members of the local.

Q Yes. Suppose there are no members of Local 456 available to work on a particular date, does that mean that the man who wants to work can use his truck?

MR. SILVERMAN: Objection, your Honor. Is Mr. Brill making up a whole fact pattern or is it one specific area that he wants to know about?

MR. BRILL: Well, this has been the subject of

inquiry before the grand jury. That is why I am asking it.

THE COURT: Well, is your question if there are no union drivers available can he use a non-union driver?

MR. BRILL: Or other drivers from other locals.

THE COURT: Do you want to ask two questions?

MR. BRILL: I will do it in one or two, either way.

THE COURT: Go ahead.

Q Did you hear the question?

A Yes. If there are no drivers from the local available you can use just for the one day until there is someone that will replace him.

Q And if there are --

A It's temporary.

Q Excuse me?

A It's temporary until --

Q Until there is an available driver from 456?

A Right.

Q And there is no way to tell whether there would be a driver available from 456 on a day or even four days or five days a week, is that right?

MR.SILVERMAN: Objection. Is he picking a particular date?

MR. BRILL: I am referring to the period to which Mr. Capossela testified, in 1965.

THE COURT: All right.

MR. BRILL: Thank you.

Q Is that correct, Mr. Capossela?

A Yes.

Q Now coming back to the job in Carmel at which you rented some trucks to Paterno & Sons, Inc., at that time can you tell us how much you charged per hour for the truck?

A Do I remember?

Q Yes.

A No, I don't.

Q Would your recollection be refreshed if you saw a particular document, such as a bill?

A Yes, it might.

MR. BRILL: All right, may we have this marked?

(Defendants' Exhibits I and J were marked for identification.)

BY MR. BRILL:

Q I show you Exhibit I for identification, Mr. Capossela, and ask you if it is a document with which you are familiar (handing).

A Yes.

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Q Is it a bill which was sent out by you in the regular course of your business?

A Yes.

Q And was it the regular of your business to send such bills?

A Yes.

Q And were they sent at or about the time on which the date appears?

A Yes.

Q And would your answers be the same with respect to Exhibit J for identification (handing)?

A Yes.

MR. BRILL: All right, I offer them in evidence, your Honor (handing).

MR.SILVERMAN: No objection, your Honor.

(Defendants' Exhibit I and J were received in evidence.)

BY MR. BRILL:

Q Are these entries in Exhibit 108 in your handwriting (handing)?

A Yes.

Q And are the bills which you sent to your customers based upon the entries in that book?

A Generally.

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Q All right. For example, on the 16th -- is that the 16th (indicating)?

A (After examining) The 16th or 18th.

Q The 18th? It looks like the 18th, right?

A It looks as though it was changed from 16 to 18.

Q From 16 to 18?

A Yes.

Q Is that your handwriting?

A This is (indicating) -- 10-1 -- this is, but this may have been changed.

Was the 16th a Saturday? I don't have a calendar. It could be a Saturday --

MR. SILVERMAN: Excuse me, at this time I would like to ask for a side bar conference.

THE COURT: All right.

(At the side bar.)

MR. SILVERMAN: I have just consulted Special Agent Ayres. It is my understanding, since I was not the attorney who handled this matter before the grand jury, that at a time during that period of time there was a request made -- I believe there was a subpoena, and the government requested at that time all invoices to all trucking companies that did business with Paterno & Sons, Inc. during the years in question, and we were given just

a few invoices before the grand jury by Mr. Paterno, who testified before the grand jury, that those were the only records they were able to find.

THE COURT: Maybe you will be able to indict him for perjury.

What is your request?

MR.SILVERMAN: What I am requesting, your Honor, is if there are any more records, if Mr. Brill or Mr. Rosenthal find any more then we would like to have them now.

MR. BRILL: I have no idea what he is talking about, and I do not think the fact that --

THE COURT: I do not know why you say you do not have any idea what he is talking about.

MR. BRILL: I don't. I haven't seen the subpoena.

THE COURT: I know you haven't seen the subpoena, but you know what he is talking about, and you can ascertain the fact and respond to his request. If there are any more such invoices he wants them, and I think he is entitled to them. I take his representation as being truthful, unless it is shown to be false.

In any event, he can ask the Court to sign a subpoena.

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MR. BRILL: I am furnishing him with everything he has asked for.

THE COURT: All he is saying is that he claims he asked for invoices like thatand he did not get them, your Exhibits I, J, and therefore he wants to be sure that this does not happen again. That is intelligible.

MR. BRILL: I understand, and I think we could sit down and find out what specifically he has in mind.

THE COURT: He just told you.

MR. BRILL: I understand that, but --

THE COURT: I can understand it standing up -- let the record show we are all on our feet and that you are alert. Let us not make a debate out of it. Tell your client if there are any more invoices like that government counsel wants them.

MR. BRILL: Your Honor, the difficulty arises from the testimony of Mr. Rizzo who, I understood to say that he examined the invoices, he examined the purchase book and he checked them out.

MR. SILVERMAN: That is correct.

MR. ROSENTHAL: And the checks also.

MR. BRILL: And the checks as well.

This is why I don't understand his request, but I am perfectly willing to go back --

THE COURT: I understand it. If there are any invoices from other truckers that have not been delivered to the government pursuant to its subpoena before the grand jury or otherwise, they are now being demanded, and I am enforcing the demand.

MR. BRILL: There will be no problem about it.

THE COURT: All right.

MR. BRILL: But I do not know what he has had or hasn't had -- that is the difficulty.

THE COURT: Well, if you have any doubt produce them all and let him go through them.

MR. BRILL: Well, we can sit down or stand up and talk about it -- whichever way it works out.

(In open court.)

MR. BRILL: I was just looking for a calendar, with your Honor's permission -- I may have a '65 calendar.

I do have a '65 calendar.

BY MR. BRILL:

Q The date is -- October the 16th was a Saturday, and therefore that would have been the 18th; correct?

A Yes.

Q So the entry, we now agree, is October the 18th; right?

A (Witness examines.)

MR. BRILL: Could we put a clip on each of these

pages, Judge, as we go along?

THE COURT: It is all right with me. I do not know whether they will be immobile forever.

MR. BRILL: I don't believe it will be forever.

Q On that day, the 18th of October, how many trucks did you rent to Paterno & Sons, Inc.?

A It indicates two.

Q Two?

A Yes.

Q Will you look at Exhibit I in evidence and tell us how many you billed for him on that date (handing)?

A Three.

Q How much per day did you get for each truck?

A Whatever the hourly rate was, multiplied by 8.

Q And the hourly rate was what at that time?

A I don't remember.

Q Does Exhibit I help you in that regard? Does it show it to be $12 an hour?

A (After examining) $12 an hour, right.

Q $12 per hour multiplied by 8, as you suggested, is $96 per day?

A Right.

Q Do you have an entry for any trucks billed on the

19th of October rented to Paterno & Sons, Inc.?

A (After examining) It looks like 1 -- that is the 20th.

Q You are looking at Exhibit 108, that portion which is in evidence?

A I don't have anything here.

Q None?

A No.

Q Now on Exhibit I in evidence, how many trucks did you bill for on October 19th?

A Three.

Q Three?

A Now wait a minute --

Q Have you finished your answer?

A This is a notebook to me. There were signed tickets furnished.

Q Signed tickets furnished.

A Yes.

Q And the tickets are signed on the job, are they not?

A Right.

Q By whoever is one of Paterno & Sons' employees?

A Yes.

Q A laborer or anybody up to the foreman?

A Yes.

Q Or superintendent?

A Or whoever.

Q Or whoever?

A Yes.

Q And you billed on the basis of the tickets?

A Right.

Q But not what is shown in the book?

A This is just a notebook.

Q So it really doesn't mean anything?

A It does -- it is a guide, but it is not an accurate ledger.

Q Not really reliable.

A No.

Q For example, on the 20th, how many trucks do the books show, Exhibit 108 show that you rented to Paterno?

A One.

Q How many does Exhibit I show you rented to Pterno and billed for?

A Three.

Q You were paid what you billed for, weren't you?

A Yes.

Q Now, on the 21st of October, does the book show you rented any trucks to Paterno & Sons, Inc.?

A It looks like one.

Q One. And how many did you bill for according to Exhibit I?

A Yes.

Q On the 22nd of October, does your book, Exhibit 108 in evidence, show that you rented any trucks to Paterno?

A Three

Q Will you show that to me, please.

A 22, DeMarco, Cross County and Regna.

Q And that's what you billed for on that date, right?

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A Three.

Q Right.

Now, on the 26th of October, does your book, Exhibit 108, show that you rented any trucks for Paterno?

A There are four trucks here.

Q On the 26th to Paterno.

A Two, three, four.

Q Aren't you looking at the 25th?

A Wait a minute, the 25th.

Q How about the 26th?

A I don't got nothing here.

Q It's true that on the 25th, where you show four, you billed for four according to "I", is that correct?

A Yes.

Q And you were paid?

A Yes.

Q How about October 26th, what does your book show?

A It doesn't showanything for the 26th. Four on the 25th.

Q But on the 26th you billed for four trucks and were paid forthem, weren't you?

A Yes.

Can I ask you a question?

Q Sure.

A Now, there were four trucks on the job. Apparently becuse it isn't here, it doesn't mean the four trucks weren't there.

Q But they were not your trucks?

A No, none of them were. Wait a minute. I sent these trucks up there.

Q What date?

A The 25th.

Q I am talking aboutthe 26th.

MR. SILVERMAN: Your Honor, will Mr. Brill let the witness respond to his question?

A What?

Q Go ahead, sir -- with his Honor's permission.

A On the 25th I had one truck of mine and three hired trucks.

Q Okay, we have no problem about that. How about the 26th?

A There is nothing here.

Q What does the book show?

A There is no entry here.

Q So according to your records, you sent no

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trucks to that job --

A Oh, I beg your pardon.

Q On the 26th?

A Wait just a moment. Don't get excited now. This was on the other job I was on. There was no entry at all made here for the job.

Q That's Ferguson?

A There again there are four trucks. Apparently there were four trucks on the job.

Q Let's stay with the 26th?

A Nothing, nothing on record here.

Q Right. The job youare talking about on the 26th is for Ferguson, a totally different job, isn't it?

A Different parts of the county.

Q And different parts of the country?

A And these trucks are different trucks working for Ferguson.

Q And had nothing to do with Paterno & Sons?

A Right.

Q But on October 26 you billed for four trucks, didn't you?

A Because they worked, that's why.

Q But not according to your book?

A This is a notebook. This is not a ledger.

Q It's not reliable?

A It's not a ledger.

Q Do you have any other record besides that notebook?

A No.

Q That's the notebook that you brought to the grand jury?

A That's the only record that I have of the job.

Q And that's the record that you brought to Mr. Silverman's office?

A Right.

Q And that's the record you discussed with Mr. Ayres and Mr. Rizzo?

A Yes.

Q And Mr. Burke and Mr. Friedman before Mr. Silverman?

A Whoever, yes.

Q Whoever it was.

By the way, on November 16, what does your book show as to the numberof trucks?

A Four.

Q And how many entries does it have showing four trucks for that date?

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A Four.

Q Two entries for the same date, four trucks?

A No.

Q November 16?

A This is the 16th here. This is the 17th.

Q I am talking about the 16th of November and the 17th of November. There are two separate dates, right?

A Yes.

MR. SILVERMAN: Objection, he asked a question as to the 16th, not the 17th.

MR. BRILL: And the 17th is two separate dates. Tht's the end ofmy question.

Q I am talking about the 16th. You say there were four trucks for Paterno?

A Yes.

Q How many were yours?

A One.

Q And the others were rented trucks?

A Right.

Q And on the 17th?

A Four.

Q Now, underneath the first number showing 11/16 there seems tc be a correction, does there not?

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A Yes.

Q On the next date?

A Yes.

Q 11, and whatever that number is, is it 16 or 17; can you tell us?

A It could be both.

Q It could be either or both.

A Yes, but --

Q Go ahead. Finish it up.

A It could be either one.

Q It could be either one. Is it true that on the next page you show another date for four trucks on the 17th of November?

A Yes.

Q Pardon?

A Yes.

Q So no wyou have two dates in your book which could either be both for the 16th of both for the 17th, right?

A Yes.

Q Correct?

A Yes.

Q And each refers to four trucks, correct?

A Yes.

Q And if it was for the 17th you would have furnished eight trucks, right?

A No.

Q No?

A This could be a mathematical error yet, too, you know.

Q Oh, I see. And if it was for the 17th could it have been eight trucks?

A And this could be the 19th. This could have been a mistake on my part by putting 17 there instead of 18.

Q Did youhave any dates after the 18th for which you billed Paterno? And isn't it true that Exhibit J in evidence shows that that's the last date on which you billed him?

A Yes.

Q For rentals.

All right, now, the first bill that you sent, you sent for the rentals for that portion of Octob er, when you provided trucks to Paterno & Sons in Carmel, right?

A Right.

Q And the job which you did there I think you told us was hauling earth or dirt?

A Yes.

Q From one place to another?

A Yes.

Q Do you know if there was any other work being done at that time at that job?

A No.

Q You don't know?

A No, there wasn't.

Q There was not?

A No.

Q Did you prepare or cause to be prepared the bill which is Exhibit I in evidence?

A Yes.

Q And you told -- who was it that typed it?

A I have no idea.

Q Somebody working for you?

A Possibly, or myself, or --

Q And you addressed this bill to Paterno Contracting Corporation, 544 Eighth Avenue, Mt. Vernon, New York, right?

A Yes, but this is a Paterno Contracing in Mt. Vernon.

Q But that's not the Paterno & Sons, Inc.?

A No, this is another --

Q This is another error?

A It's full of errors.

Q But you were paid for this error according to this bill, right?

A Apparently it was rectified. The error was rectified and they accepted it.

Q You brought the bill to Paterno & Sons at City Island?

A Yes.

Q Or Bronx, New York, rather?

A Whereever it is.

Q And you picked up the check, right?

A Yes.

Q And the second one you addressed correctly?

A Right.

Q And the check was sent to you, right?

A Either one.

Q Either one. All right.

Is it fair to say that you don't have any idea of the number of truckers who worked on that Carmel job?

A Yes, it's fair to say. I have no idea. I was on the job for the period here. What had happened afterwards -- while I was there, I saw nothing.

Q All right, and while -- beforeyou got there,

merll Capossela-cross

you don't know what happened either, do you?

A The job just started.

Q And do you know when the job finished?

A No.

Q All right, but you do agree that it's fair to say that you don't know what happened after the 18th or whenever the last date was on which you --

A I have no idea.

Q Pardon?

A I have no idea what happened.

MR. BRILL: Thank you. I have no further questions, your Honor.

THE WITNESS: Excuse me, can I make a correction to that last?

THE COURT: Yes, go ahead.

A Yes, I do know what happened. I had left. A lot of these truckers stayed on the job, and I'm pretty sure Cimino had taken charge of the job after I left. Come to think of it, I think that's correct.

MR. BRILL: I move to strike the gratuitous remark, your Honor, very respectfully. At best it would be hearsay.

THE WITNESS: It wasn't hearsay either.

THE COURT: I am going to wait until you both

subside. Either one of us, Mr. Capossela or I are going to rule on your objection sooner or later.

What do you think we ought to do?

THE WITNESS: I don't know, let's talk it over.

(Laughter)

THE COURT: While we are negotiating it out I am just going to leave it stand becuase you did ask him what had happened after he left, and you could have known that you might be eliciting some hearsay if you asked that.

MR. BRILL: I don't quite agree, your Honor.

THE COURT: You and I occasionally disagree.

MR. BRILL: Respectfully disagree and reserve the right to move to strike.

THE COURT: Okay. Go ahead, Mr. Rosenthal.

CROSS-EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Capossela,who originally hired you to do any work for Paterno & Sons, if you recall?

A I can't honestly say.

Q Do you remember now, as you sit there, whether you solicited the work or somebody reached out for you to do the job?

A I may have.

Q Solicited the work?

A I may have.

Q Right. And that's quite common in your business, is it not?

A Yes.

Q Both things happen very frequently, sometimes you go looking for work, and sometimes the contractor comes looking for you or some other trucker for work, is that correct?

A Yes.

Q And, sir, you had, since you do not have enough trucks to do your other jobs and this job, you did use some other people's trucks?

A Yes.

Q DeMarco, and I think you said Cimino, or Cross County, is that correct, sir?

A Yes.

Q Now, when you billed, did you bill for DeMarco's trucks?

A Yes, for this period.

Q Right. For the period taht he did work for you up there?

A Yes.

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Q And when you billed, youbilled for Cross County's trucks also, didn't you?

A Yes.

Q And then whatever you got paid, and whatever you had to pay them, you paid out of your own?

A Yes.

Q Out of your own money, is that correct, sir; they didn't bill direct, did they?

A Not for this period.

Q Not in this instance?

A No.

Q And that is also common in your field of work, isn't it?

A Yes.

Q For one trucker to -- if he has more work than he can actually accommodate, or has enough equipment to accommodate, it's very common for him to even list other truckers, is that not so?

A Yes.

Q Sometimes they are men with one truck who really do the work themselves on their own truck, isn't that so?

A No, I misunderstood that, I'm sorry.

Q Where you have a call for more equipment than

you have available, and when I say you, I am talking practically about any trucker doing a job.

A Yes.

Q It's customary to reach out for other truckers?

A Yes.

Q Who might have a truck or trucks available?

A Yes.

Q And is it not true that frequently it will be a man with a single truck?

A YEs.

Q Who drives it himself and owns the equipment?

A Well, no. There is a bylaw in 456 that you can't drive your own truck, you can't own and operate a truck.

Q That is a requirement of 456?

A Yes,right.

Q Do you know if that's true of the other locals of the Teamsters Union?

A I have no idea. I don't deal with any of of those.

Q And as you sit there now, you have no idea, do you, sir, as to whether or not there were other drivers available in 456, Local 456, during the period

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that you were working up at Carmel?

A I have no idea. It's too far back.

Q And if there weren't other drivers available, a man could drive his own truck, could he not?

A Yes, only for the period of time that it takes for them to get a driver.

Q I understand that. And that might be a day or it might be a week or a month depending on how busy that local is?

A It would be a day.

Q Now, sir, while you were up at Carmel, were you aware of the fact that there were three jobs going on simultaneously up there?

A No.

Q Well, have you heard about Balport Construction?

A Yes.

MR. SILVERMAN: The jobs that Mr. Rosenthal is referring to are these jobs being run by Paterno & Sons, Inc. or by other companies?

THE COURT: Are you asking about other companies?

MR. ROSENTHAL: I am asking about other companies that were doing work simultaneously or at the

same period of time that Paterno was.

THE COURT: Why is that relevant?

MR. ROSENTHAL: That is relevant because of the fact that there was an interchange of equipment between the companies during that period.

THE COURT: You say you are going to show that later on, Mr. Rosenthal, because you just said that, but of course that's not evidence. Do you represent --

MR. ROSENTHAL: Your Honor, I do represent --

THE COURT: You represent that you are going to adduce that in evidence?

MR. ROSENTHAL: I will be able to demonstrate that to the satisfaction of the Court.

THE COURT: All right, on that represetnation I will allow it.

Q Were you aware of the fact that Balport was doing a sewer job at the same period of time that you were there?

A I can't remember.

Q Or that Frederico or F&F I think it was the name of the Company was also doing a sewer job at the same time you were there?

A I can't remember.

Q Well, did you haul fill from the Jacob Ruppert

Brewery up to the sewage plant in Carmel?

A It was a fill bank. I have no idea who owned the property.

Q Where was it from? Where was the fill bank located?

A It was adjoining the job.

Q Now, sir, in your years of experience as a truckman and as a renter of trucks, have you ever seen trucks on jobs,construction jobs, particularly, heavy construction of this type, with no name on this door?

MR. SILVERMAN: Objection, your Honor. He is not an expert as to what he has seen in the past, he is an expert as to a trucker and about the trucking business.

THE COURT: No, I will allow it.

You may answer.

A On occasions.

Q B&C, was that a corporation or a partnership?

A That was a company.

Q A company?

A Yes.

Q And who is the company?

A I was.

Q Originally you had a partner?

A Yes, I had a partner.

Q And that dissolved after about how long a period of time?

A A very short period, six weeks, five weeks, whatever.

Q Where was the company bank account?

A New Rochelle.

Q What bank, do you know?

A I don't.

Q And who would deposit checks for the company?

A Who would?

Q Yes.

A I would.

Q You were the company?

A Yes.

Q Did you have any employees or anything of that sort?

A Yes.

Q In 1965 howmany employees did you have?

A As many drivers -- as many trucks as I owned.

Q All right, I am not talking about -- I am sorry, it's my fault. I am not talking about truck drivers, I am talking, did you have any office employees?

A No.

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Q You were the office?

A Yes.

Q And you were the company?

A Right.

Q And you were the man who signed checks?

A Yes.

Q And you were the man who deposited checks?

A Yes.

Q Is that correct? Now, sir, will you, using your own pen, write BC Trucking two or three times?

A May I use your pen?

Q You may, but I thought you would be more comfortable with your own.

MR. SILVERMAN: Your Honor, what's the relevance of writing BC Trucking three times?

THE COURT: I don't know, but we will let it go and see what happens.

(Defendants' Exhibits K and L were marked for identification)

MR. ROSENTHAL: And then this.

(Defendants' Exhibit M was marked for identification)

Q Now I show you Defendants' Exhibit K, which is check No. 7535 of Paterno & Sons, dated November 10, '65,

45,

to B& C Trucking in the sum of $1605.78, and call your attention to the endorsement on the back of that. Do you know in whose writing that is?

A Oh, yes. It looks like mine.

Q It looks like yours, doesn't it? And do you know whether or not you deposited that check or you cashed it somewheres?

A I must have deposited it. I couldn't cash a company check anyway.

Q Do you know what you did?

A No, I don't know, I mean, eight and a half years ago.

Q Did you have an account in the Chemical Bank?

A Yes.

Q At that time?

A Right.

Q And as you sit there now, you don't recall and you are not certain, as to whether or not you cash that check at the Chemical Bank or you deposited it in your bank account?

A I am not sure.

Q And Mr. Capossela -- is it with an A at th

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A A.

Q If that were a deposit, am I correct in assuming that you made your deposits merely by endorsing the name of the company on it?

A Yes.

Q You didn't have any nice rubber stamp that the bank had given you for deposits, did you?

A No.

MR. ROSENTHAL: I offer this in evidence.

MR. SILVERMAN: May I see it?

MR. ROSENTHAL: Sure (handing).

MR. SILVERMAN: No objection.

(Defendants' Exhibit K was received in evidence)

BY MR. ROSENTHAL:

Q Now, sir, I show you Defendants' Exhibit L for identification, which is check No. 7712 of Paterno & Sons, Inc. to the order of B&C Trucking Co. in the sum of $1939.63, and dated December 3, 1965, and ask you whose endorsement that is on the back which reads B&C Trucking?

A It looks like it.

Q What, sir?

A It looks like it.

THE COURT: Looks like what?

Q Looks like yours?

A Yes.

THE COURT: Your handwriting?

A Yes.

Q Is there any doubt in your mind as to that, looking at these two endorsements on the other check comparing them, does it look to you like they were endorsed by the same person?

A It's not for me to say.

Q I say does it look to you as though they were endorsed by the same person?

A No.

Q And does the second one, which is L, this one here -- yes, L -- does that look to you like it's your handwriting?

A You know, in comparison to the other one, it doesn't.

Q Well, in comparison to Defendants' Exhibit M for identification --

THE COURT: Well, now, I think you better tell us what the relevance of this is, Mr. Rosenthal.

MR. SILVERMAN: May I see those exhibits for a moment, your Honor?

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THE COURT: No, I want to know why this is relevant. Please tell us.

MR. ROSENTHAL: May I make you a representation at the side bar?

THE COURT: I don't think you need to go to the side bar. Just tell us why it is relevant.

MR. ROSENTHAL: If the Court please, I anticipate, as a result of material that's been furnished me by the government, that the government proposes to introduce handwriting experts as to endorsements on some of the checks running from Exhibits 1 to 48. There are certain similarities in some of the -- in one of these endorsements to some of the checks that the government intends to offer evidence as to.

I am attempting to anticipate, since I don't know if I will have the opportunity to have Mr. Capossela back, to establish that people frequently do in making endorsements of checks or giving endorsements of checks vary their handwriting.

THE COURT: No, I won't allow it. You mean every witness that comes along you are going to have a handwritng test of him?

MR. ROSENTHAL: No.

THE COURT: I simply won't allowit.

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MR. ROSENTHAL: I represent to the Court that there are certain similarities.

THE COURT: Do you claim the same person signed that who signed any one of the exhibits 1 to 48?

MR. ROSENTHAL: It's possible. It's within the realm of possibility.

THE COURT: I will not allow it. I will not let the jury speculate on that.

MR. ROSENTHAL: May I at this time offer in evidence Defendants' Exhibit L and Defendants' Exhibit M.

MR. SILVERMAN: Your Honor, may we approach the side bar, please.

THE COURT: Yes.

MR. SILVERMAN: Your Honor, I am by no means an expert, but I have been investigating checks and currency of checks in the past for about five years. By examining these checks it appears to me that these checks were all deposited and none of them were cashed.

MR. ROSENTHAL: I don't know that.

MR. SILVERMAN: The only stamp on the face of the check is the Royal National Bank stamp. There is no mark of the Chemical aside from the reverse side of the check where it clears. There is no teller's

stamp. If Mr. Rosenthal is giving us the inference that these checks were not deposited to Mr. Capossela's account, I'd like to pursue this further with an expert coming in from the Chemical Bank.

THE COURT: Are you saying you don't know?

MR. ROSENTHAL: I don't know. I don't pretend to know.

THE COURT: Subpoena somebody from the Chemical Bank to explain the stamps on the back of that because I have the same impression that you do.

MR. ROSENTHAL: I said I don't know.

THE COURT: And Mr. Rosenthal, I really do not wish you to lead us on tangents of this kind with handwriting exemplars of witnesses who happen to come along. You have been moving along briskly in this trial so far, but I don't want any more of such enterprises.

You can subpoena somebody from the Chemical Bank.

MR. SILVERMAN: Okay, your Honor. Thank you.

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(In open court.)

THE COURT: All right, the two checks are received without objection?

MR. SILVERMAN: Without objection, your Honor.

THE COURT: All right, Exhibit M is excluded.

(Defendant's Exhibits K and L for identification received in evidence.)

BY MR. ROSENTHAL:

Q Am I correct, Mr. Capossela, in assuming that where you hired other trucks or other truckmen to fill in or assist you, that you didn't pay any workmen's compensation insurance on them? Did you?

A No.

Q They were independent contractors so far as you were concerned, is that right?

A Right.

Q You didn't have to file any withholding tax or Social Security or anything of that sort?

A No.

MR. ROSENTHAL: I have no other questions.

THE COURT: Any redirect?

MR.SILVERMAN: Just a few questions on redirect, your Honor.

slbr 2 Capossela-redirect

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Capossela, did you prepare bills that you submitted to Paterno & Sons, Inc. for the work you performed?

A Yes, most of the time.

Q Did you prepare your bills from the delivery tickets that you received from the drivers of the truck or from that book?

A No, from the tickets.

Q Do you presently have those tickets?

A No, I have not.

Q Were you asked to produce those tickets?

A Was I asked?

Q Yes.

A Yes.

Q You don't have them, do you?

A No.

Q Is this the only record of the work you performed in 1965 and 1966?

A Yes.

MR. SILVERMAN: I have no further questions, your Honor.

(Witness excused.)

slbr 3 Cimino-direct

RAYMOND CIMINO, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Cimino, will you please keep your voice up so the people in the back car hear you?

A Yes.

Q What is your full name, sir?

A Raymond Cimino.

Q Where do you presently live?

A 632 Palmer Road, Yonkers, New York.

Q Mr. Cimino, what is your present occupation?

A I am a contractor.

Q How long have you been in the contracting business?

A 15 years.

Q Under what name did you operate your business during these last 15 years?

A I operated under three different names.

Q What are the names?

A Cross County Trucking, Cross County Contracting and Cimino Contracting.

Q During the years 1965 and 1966 under what name did

you operate?

A Cross County Trucking.

Q Where was Cross County Trucking's offices located?

A 320 Locust Street, Mount Vernon.

Q Is the address 91 Fletcher Avenue familiar to you?

A Yes.

Q What is that address?

A That was another office.

Q Of the same company?

A Right.

Q Who was the owner of Cross County Trucking?

A I was the owner, but it was under Delia Ponce's name.

Q Excuse me?

A I was the owner but it was under Delia Ponce's name.

Q Who is that individual?

A She is my sister-in-law.

Q How many trucks did Cross County own in the years 1965 and 1966?

A Gee, I don't remember how many I owned.

Q Give us an approximation, if you recall?

A A couple.

Q You say a couple. Less than five, sir?

A Yes.

Q Now, are you still employed by Cross County Trucking?

A No.

Q Are you familiar with the firm of Paterno & Sons, Inc.?

A Yes.

Q Did you work on any jobs where they were a contractor?

A Yes.

Q On how many jobs did you work where they were a contractor?

A One.

Q What was the area called that you worked in?

A Lake Carmel.

Q Under which name did you do business with Paterno & Sons, Inc.?

A Cross County Trucking.

Q Do you recall, sir, how you got the job, how you were retained by Paterno & Sons, Inc.?

A I am not sure. I think I was in through B&C Trucking.

Q What was the name of the individual through whom --

A Jimmy Capossela.

Q Do you recall, sir, what period of time you worked for Paterno & Sons, Inc.?

A No, I don't remember the time.

Q I show you Governmen's Exhibits 105, 106 and 107 for identification, sir, and ask you if you recognize them?

A Yes, they are my billings.

Q What period do they cover?

A They are from 3/30 to 6/22.

Q Of what year?

A Of 1966.

Q Of what year, sir?

A Of 1966.

Q Are they originals or are they copies, sir?

A These are originals.

Q Now, could you tell by looking at these exhibits for contractor they relate to?

A This job?

Q Yes. What contractor?

A Paterno & Sons, Inc.

Q And what address is listed on that particular --

A 2507 Rode Street.

Q What about Exhibit 106?

A Same thing.

Q And 107?

A Same thing.

MR. SILVERMAN: I would like to offer these in evidence, 105, 106 and 107.

(Defense counsel confer.)

THE COURT: Gentlemen, if these are confidential discussions I can hear them from here.

MR.ROSENTHAL: There is a little difference in the appearance of these.

No objection.

(Government's Exhibits 105, 106 and 107 for identification were received in evidence.)

BY MR. SILVERMAN:

Q Mr. Cimino, did you get paid for the work you performed for Paterno & Sons, Inc.?

A Right.

Q How did you get paid, sir?

A By check.

Q Now, when you began work for Paterno & Sons, Inc. at the Carmel job were there any other truckers working there already?

A Yes.

Q What were the names of those truckers?

A I don't remember the names of the truckers.

Q Was B&C Trucking working there before you?

A Yes, Jimmy Capossela was there.

Q Do you recall the name DeMarco?

A Yes.

Q Was he working there before you or after you?

A Gee, I really don't know.

Q Do you recall him working at that particular time?

A Yes.

Q What type of trucking work had you performed at that particular job?

A Well, trucking dirt.

Q Were you hauling dirt?

A Right.

Q On any occasion while you were working during this period for Paterno & Sons, Inc. did youever provide more trucks than you actually owned?

A Yes.

Q Whom did you get the truck from or trucks from that you provided?

A I think at that time it was Mario DeMarco's truck.

Q Do you know an individual by the name of Corsi?

A Yes.

Q Did you use any trucks of Mr. Corsi's during that period of time?

A I did.

Q Were those trucks used at the Paterno job site?

A Right.

Q Now, did you bill for Mr. Corsi's services or did Mr. Corsi bill directly?

A I don't remember if I billed some and he billed some. I really don't remember.

Q Now, in regard to the Carmel job site itself, did you perform any other job or reponsibility other than as a trucker?

A No.

Q Are you a shop steward, sir?

A Yes.

Q At the Carmel job site were you a shop steward for the union?

A No -- yes, I was for the union for Cross County Trucking, not for Paterno.

Q I mean, for the union.

A Right.

Q What union was that for?

A Local 456.

Q And what were your responsibilities at that job site as the shop steward?

A Well, every yard has a shop steward. They are

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just like the No. 1 man on the job.

Q What does the shop steward do as a union representative at that job site?

A Well, you could challenge anyone that comes on the job site.

Q What does the word "challenge" mean as far as union terminology is concerned?

A Well, check somebody's book to see if he has got a union book.

Q Now, while you were at that job site did you ever challenge anyone?

A No.

Q Mr. Cimino, do you know a man by the name of -- I hope I get the pronunciation right -- Iodice?

A Yes, Tony Iodice.

Q To your knowledge is he a union member?

A No.

Q Did you, in fact, challenge him?

A I think I did challenge him one time delivering a machine on the job site.

Q Now, Mr. Cimino, at the end of a working day while your trucks were working at the Paterno job site at Carmel, what would do with the trucks?

A Well, where I was getting loaded, I would just

leave the truck right there.

Q Where did you garage your trucks during that period of time normally?

A Right on the job site where the machine was.

Q Did you notice at that particular job site any other trucks while your trucks were parked there?

A No.

Q Mr. Cimino, are you familiar with a trucker or do you know of a trucker by the name of John Aurrichio?

A No.

Q Do you know a trucker by the name of Arthur Lazravitch?

A No.

Q Do you know a trucker by the name of Thomas Tuccella?

A No.

Q Do you know a trucker by the name of Anthony Ferrotta, sir?

A No.

Q Do you know a trucker by the name of Michael Capossela?

A No.

Q Did you see any trucks at the Paterno job site while you were working there with those names on the sides?

A The job site I was on wasn't the job site where they were doing the excavation.

Q In any part of the job site where you were working, did you see any trucks with those names?

A No.

Q Mr. Cimino, what system did your company use during that particular time to determine how much to bill a particular contractor for work he performed?

A How?

Q Yes.

A I had a ticket signed every day for the hours I worked.

Q Who signed the ticket?

A The foreman on the job.

Q How often would you bill for the work you performed for a contractor?

A Once a month.

Q What would you use to compute the figures on how much to bill?

A Well, I usually got a little pad, I would write it down, the hours, with a bill. I got receipts.

Q Are these the delivery tickets you are referring to?

A Right.

slbr 13 Cimino-direct-cross

MR. SILVERMAN: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. BRILL:

Q Is it true, Mr. Cimino, that Tony Iodice was not employed by Paterno & Sons, Inc.?

A Right.

Q He worked for some other contractor?

A He worked for himself.

Q Himself?

A Self-employed.

Q Now, you told us that the union forbids owners from driving their own trucks?

A Right.

Q Pardon?

A That is right.

Q And you were the shop steward for Cross County?

A Right.

Q And that was your own company?

A Right.

Q And were you driving the truck?

A Right.

Q But the ownership was shown to be in somebody else's name?

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A Right.

Q And that was in order to keep the truth from the union?

A Right.

MR. BRILL: I have no further questions.

THE COURT: Mr. Rosenthal?

MR. ROSENTHAL: I have no questions.

THE COURT: Any redirect?

MR. SILVERMAN: No, your Honor.

THE COURT: All right, Mr. Cimino --

MR. ROSENTHAL: Oh, just one moment, I am sorry.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q I think you told us a few minutes ago that there were other job sites up at Carmel?

A Right.

Q There were two other jobs going on at or about the same time, were there not?

A Yes.

Q And you know nothing about the trucks that were there or anything of that sort?

A Right.

Q You were not any shop steward over there?

A No, I was a shop steward for Cross County

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Trucking.

Q For your company?

A Right.

MR. ROSENTHAL: I have no further questions.

THE COURT: All right, Mr. Cimino.

(Witness excused.)

MR. SILVERMAN: Your Honor, I just want to see which witness is out there.

J O H N A U R R I C H I O, called as a witness in behalf of the government, being first duly sworn, testified as follows:

MR. BRILL: Will our Honor entertain a side bar conference?

THE COURT: Yes.

(At the side bar.)

MR. BRILL: Briefly, your Honor, because I think the nature of this testimony may be irremedially prejudicial, I ask for an offer of proof.

MR. SILVERMAN: The witness is going to testify that he worked for Paterno & Sons before March of 1965 at the World's Fair site, and that he has looked at the checks in question signed by the name of John Aurrichio, and he will testify that he did not sign any of those checks, and that he did not work for Paterno & Sons during

slbr 16 Aurrichio-

the period in question, 1965 through 1970.

MR. ROSENTHAL: Nobody says he did.

MR.BRILL: We are not claiming that he did, and there is no suggestion that this man did.

MR. ROSENTHAL: In fact, Denti testified before the IRS that he knew Aurrichio who was not the trucker involved and was in the equipment business, which is this man here.

THE COURT: I don't see why I should allow it.

MR. SILVERMAN: The inference arises that he might have been, since he is the only John Aurrichio we were able to locate, and he is the only John Aurrichio to our knowledge he will testify he did not maintain a business at the addresses that are listed on the invoices, and that he is not the John Aurrichio, the one claimed to be John Aurrichio.

MR. ROSENTHAL: Nobody said he was.

MR.SILVERMAN: It is absolutely essential to the government's proof --

THE COURT: I think I am going to allow it. Proof of a negative is very difficult, and I think the proof of a full investigation, an analogy to net worth and other cases is appropriate.

MR. BRILL: But the inferences which he seeks to draw are the inferences which he creates by this sort of

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thing.

THE COURT: No, he is showing that what the government has done is what I would hold it responsible to do, to look everywhere in the world to see if these are real people. The Supreme Court so held in a net worth case.

You have got to negate possibilities of innocent explanations, and I think this is legitimate proof, and I am going to allow it.

MR. BRILL: In order to avoid interruption throughout his testimony by repetitive objections, may we now object to the reception of any other evidence from this man for the reasons stated?

THE COURT: Yes, I assume you have done that. You both have exceptions.

MR. BRILL: Thank you.

(End of side bar conference.)

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Aurrichio, will you please state your name so everyone in the back of the room will be able to hear you, and keep your voice up,please?

A John Aurrichio.

Q Mr. Aurrichio, where do you presently reside?

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A 25 Buckingham Drive, Dix Hills, Huntington.

Q What is your present occupation,sir?

A I am a contractor.

Q And under what name do you presently operate?

A ATA Contracting Company.

Q Where is that business located?

A That is located in College Point -- in Flushing, rather, Queens.

Q And what is your position with ATA Contracting Corp.?

A I am the president.

Q How long has ATA Contracting Corp. been in operation?

A Oh, approximately 15 years.

Q While you were operating the firm of ATA, during the same period of time were you associated with any trucking business?

A Not a trucking business; another contracting business.

Q What was the name of that business?

A It was two names. Aurrichio and Tuccillo Contracting.

Q How do you spell the name Tuccillo.

A T-u-c-c-i-l-l-o.

Q Was that the name of a partner?

A Yes, that was my partner.

Q What was his first name?

A Louis.

Q Where was that business located?

A The same -- approximately the same address. We changed locations from one part of Flushing to another.

Q Are you familiar with the company known as Paterno & Sons, Inc.?

A Yes .

Q Did you at any time work for Paterno & Sons, Inc. in the contracting business?

A Yes.

Q And at what location did you work for Paterno & Sons, Inc.?

A Where was I located?

Q At what location did you perform?

A Oh, it was somewhere in the Bronx, I don't recall exactly.

Q The question, sir, is at what location did you perform the work for Paterno & Sons, Inc.?

A In what location?

Q In what job site.

A Oh, I don't recall exactly. I know it was somewhere in the Bronx.

Q Do you recall when this took place?

A When it took place? It took place many years ago -- ten years ago.

Q Did you ever work for Paterno & Sons, Inc. at the World's Fair?

A Not that I recall -- I might have but I don't recall.

Q During the years 1965 through 1970 did you work for Paterno & Sons, Inc. --

A No.

Q -- at any location?

A No, I did not.

Q What type of equipment does your company rent?

A Payloaders. They are truck loaders, they are Caterpillars with buckets in front -- payloaders and trucks.

Q Are they dump trucks?

A Dump trucks, right.

Q Did you receive payment for the work you performed?

A Yes, I imagine we did.

Q In what form did you receive the payment, if you recall?

A Check.

Q Under what name did you bill Paterno & Sons, Inc.?

A Aurrichio and Tuccillo.

Q Have you ever billed any contractor under any name other than Aurrichio and Tuccillo or ATA Contracting Corp.?

A No.

Q Did you ever bill any contractor under your own name, John Aurrichio?

A Never.

Q Have you ever lived or used as an address 800 Jericho Turnpike, Huntington Station?

A No.

Q Mr. Aurrichio, have you ever cashed a check at the Royal National Bank in the Bronx?

A No.

Q Mr. Aurrichio, I would like you to look at Government's Exhibits 1 through 12, and I ask you if you endorsed any of those checks (handing)?

A (After examining) No, they are all made out to my name.

Q Did you endorse any of those checks?

A No.

Q Do you know or have you heard of a trucker by the name of Thomas Tuccella?

A Thomas Tuccella?

Q Tuccella?

A No.

Q Do you know a trucker by the name of Anthony Ferrotta?

A No.

Q Do you know a trucker by the name of Michael Catenzaro?

A I can't recall.

Q Do you know a trucker by the name of Arthur Lazravitch?

A Arthur Lazravitch?

Q Yes, Arthur Lazravitch.

A No.

Q Do you know of any trucker other than yourself by the name of John Aurrichio?

A No.

MR. SILVERMAN: I have no further questions.

THE COURT: Mr. Brill?

MR. BRILL: We have not received any material with respect to this witness, your Honor.

MR. SILVERMAN: It is No. 3523.

MR. BRILL: That is one we did not get.

THE COURT: All right, hand him 3523, or a copy of it.

(Mr. Silverman hands to Mr. Brill.)

MR. BRILL: May I take a minute or two to read it, your Honor?

THE COURT: All right.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Aurrichio -- or is it pronounced Aurrichio?

A Aurrichio, you are right.

Q Are you known by any other name?

A In business?

Q Yes.

A No.

Q Well, aren't you commonly known among people in the contracting business and in the trucking business and in the equipment business as Jack Aurrichio?

A Right, Jack Aurrichio.

Q And if somebody said John Aurrichio they might or might not think they refer to you, is that correct?

A Could be.

Q Are you familiar with the name Lazravitch?

A Yes, I have heard of Lazravitch but not Arthur.

Q Have you heard of a Buddy Lazravitch?

A I think so -- I don't remember now, to be honest with you. There are a lot of Lazravitches.

Q And they are in the trucking business, are they not?

A Yes, that I know of.

Q Those that you know.

A The ones I know are in the trucking business.

Q And among them do you say now that you never heard of you do not know of Buddy Lazravitch in the trucking business, in the truck rental business?

A I don't know Buddy Lazravitch. I know different Lazravitches but I don't know Buddy. I don't know which

one Buddy is.

Q And do you know the first names of all the Lazravitches that you know?

A I know a few of them, yes.

Q About how many are there all together in the truck rental business?

A I would say four or five.

Q Your business is primarily heavy equipment, is it not?

A Yes.

Q And trucking is a minor part of it?

A Well, it is part of the business.

Q Yes.

A We have a few trucks.

Q That you use for your own work?

A Right.

Q And sometimes you rent those trucks out when you do not have work of your own?

A Right.

Q And that is quite common in the construction business, is it not?

A That's right.

Q Many contractors may have one or two trucks that are not needed for the particular job they are working

on, and if there is other work available for those trucks they would rent them out, will they not?

A Yes, they do.

Q And you have done the same with yours on occasion?

A Correct.

Q Do you always bill directly for your truck rentals or do you always bill directly for your truck rentals?

A I always bill directly for trucking or anything. It is always billed Aurrichio and Tuccillo or ATA.

Q Now you do know that there are truckers or people in the business of renting and supplying trucks who at times engage outside trucks when they don't have enough equipment and they bill it in their name, is that true?

MR. SILVERMAN: Objection, your Honor. Nobody testified to that.

THE COURT: Well, he is asking him.

Is that true, do you know?

THE WITNESS: Can you repeat that?

Q All right, I will try to break it down -- it is an awkward question.

There are companies that rent primarily trucks, is that correct, sir?

A Yes.

Q And sometimes they have a job where there is more

trucks required than they are able to supply from their own?

A Right.

Q And on those occasions they would reach out and obtain the services of one or more other truckers?

A Correct.

Q And am I correct, sir, that it is not uncommon for that primary contractor, the person who is normally supplying trucks for the job, to bill not only for his trucks but for the trucks and drivers of the other people who supply trucks to him?

A When you say that do you mean when the bill is done to the contractor?

Q To the general contractor, yes.

A Yes, all they will do is put down the number of trucks.

Q Right.

A Five trucks, for argument's sake, and then when they get paid they pay the trucker.

Q They don't set forth in the bill, one truck, Joe Blow; two trucks, John De Marco; three trucks, the Cross County Company, or anything of that sort, do they, sir?

A Well, this is up to the individual.

Q No, but I say normally that is the way it is done, just five trucks, assuming --

A Five trucks.

They don't use names.

Q That's what I wanted to know.

A Yes.

MR. ROSENTHAL: Thank you.

THE COURT: Do you have anything else?

MR.SILVERMAN: No, your Honor.

THE COURT: All right, thank you, Mr. Aurricho.

pm (Witness excused.)

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SAMUEL JOSEPH LA SPINA, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. LaSpina, may I please request you,sir, to keep your voice up so the people in the back will be able to hear you.

What is your full name?

A Samuel Joseph LaSpina.

Q Where do you presently live, sir?

A 1325 East 222nd Street.

Q Where is that, in the Bronx?

A In the Bronx.

Q What is your occupation, sir?

A My occupation?

Q Yes.

A I am in the contracting business.

Q What is the name of your contracting business?

A LaSpina Contracting Company, Inc.

Q And where is that contracting business located?

A The yard is located 1408 Bassett Avenue in the Bronx.

Q How long have you operated this business, sir?

A Ten years.

Q Now, what type of equipment does the company own?

A As of now?

Q Yes, sir.

A Two dump trucks.

Q And during the period of 1965 to 1970, what kind of equipment did the company own?

A One dump truck and one machine.

Q Now,how often, sir, during that period did you bill for the services that you performed for contractors?

A When I work for a contractor I bill every week.

Q And which bank did you use as your bank for your corporate work?

A As of now?

Q No, during the periof 1965 to 1970.

A First National City Bank.

Q Do you recall the branch, sir?

A Cattle Hill Avenue.

Q Now, do you belong to any union, sir?

A I belong to Local 282.

Q Do you know what area 282 covers?

A It covers the five boroughs of the City of New York.

Q Now, during the year 1965 to 1970, did you have any drivers working for you?

A I had a driver in my employ in 1968, for a period of six months, and that was it.

Q During the years 1965 to 1971, who were the major people that you did contracting work for, did the trucking work for?

A I worked for various contractors.

Q Did you work for a company called DeSimone Brothers?

A Yes, sir.

Q And did you work for a company called the Claro Contracting Corporation?

A Yes, sir.

Q Did you work for a company known as Paterno & Sons, Inc.?

A Yes, sir.

Q Do you know a trucker by the name of Teddy Minichino?

A Yes, sir.

Q And is he the one that's affiliated with

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Taft Trucking?

A Yes, sir.

Q Do you know the principals of the firm of Paterno & Sons, Inc.?

A Do I know the principals, the people who own the place?

Q Yes.

MR. BRILL: I object to that, if your Honor please.

MR. ROSENTHAL: Objection.

THE COURT: Sorry I was distracted.

MR. SILVERMAN: I will change the question, your Honor.

Q Do you know the defendant Michael Paterno?

A Yes, sir.

Q Do you know the defendant George Denti?

A Yes, sir.

Q Is your familiarity with them out of the fact that you did work for Paterno & Sons, Inc., is that how you know them?

A A business relationship.

Q Is that correct, sir?

A Yes, sir.

Q Do you recall who hired you for the jobs you

worked at Paterno & Sons, Inc.?

A I was hired through Jim Reilly and George Denti.

Q And is Jim Reilly -- what position does he hold, if you know, in Paterno & Sons, Inc.?

A Superintendent.

Q Did you work for Paterno & Sons, Inc. at the Cedarhurst location, Peninsula Boulevard?

A Yes, sir.

Q Did you work for Paterno & Sons at Watson Avenue?

A Yes, sir.

Q Johnson and Morgan?

A Yes, sir.

Q Did you work for Paterno & Sons, Inc. at Carmel, New York?

A No, sir.

Q And did you work for Paterno & Sons, Inc. at Rockaway?

A No, sir.

Q And on occasion, were you ever asked by anyone at Paterno & Sons, Inc. to bring more trucks than you actually owned?

A Yes, sir.

Q Do you recall on which job you were asked to bring more trucks than you actually owned?

A It was the Johnson and Morgan Avenue job.

Q Were you able to get more trucks?

A Yes. I didn't get the trucks myself. I reached out for them, and I called people, and they went there and dealt direct with Paterno & Sons.

Q Do you recall who you called to get these trucks?

A I called Lanza Brothers in Brooklyn. That's about the only one I called.

Q Did you ever get trucks from any other company other than Lanza Brothers for Paterno & Sons, Inc.?

A No, sir.

Q Did you pay Lanza Brothers for the work they performed?

A No, sir.

Q Do you know a trucker or have you ever heard of a trucker by the name of Michael Catenzaro?

MR. BRILL: Objected to, if your Honor please, on the same grounds as before.

THE COURT: Same grounds as what?

MR. BRILL: Hearsay, did you ever hear of a trucker named Catenzaro?

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THE COURT: Yes, but I would think that the impact is not unfavorable or prejudicial.

Overruled.

Q Do you know or did you ever hear of a trucker by the name of Michael Catenzaro?

A No, sir.

Q Do you know or did you ever hear of a trucker by the name of Anthony Ferrotta?

A No, sir.

Q Do you know or did you ever hear of a trucker by the name of Arthur Lazravitch?

A I have seen a name on a truck like that, I have seen a name on the truck but I don't know the person.

Q Do you know or have you ever heard of a trucker by the name of Thomas Tuccella?

A No, sir.

Q Have you ever heard of a trucking firm or a contracting firm by the name of Aurrichio and Tuccella?

A Yes, sir.

Q Do you know where they are located?

A As far as my memory could recall I think they were out in Flushing, New York someplace.

Q Is that in Queens?

A Yes.

Q Did you ever hire any truckers for Paterno & Sons, Inc. by the names of Aurrichio, Lazravitch, Catenzaro, Tuccella or Ferrotta?

A No, sir.

Q The only trucker you ever hired for Paterno & Sons or got for them was this Lanza Brothers, is that correct?

A Yes, sir.

Q Did you ever cash any checks, sir, at the Royal National Bank at 149th Street in the Bronx?

A No, sir.

Q Did you ever cash a check at a bar called Vin Rao's in Manhattan?

MR. ROSENTHAL: Now, if your Honor please, I submit that I don't think there is any claim by anybody that this man did cash any checks and I personally can't see the purpose of asking these questions.

THE COURT: Well, I won't take an objection to questions wholesale but I will sustain the objection to the pending question.

MR. ROSENTHAL: Thank you.

MR. SILVERMAN: I have no further questions, your Honor.

MR. SILVERMAN: Excuse me, your Honor. I am sorry I didn't notice I had a few more questions.

THE COURT: All right.

BY MR. SILVERMAN:

Q Mr. LaSpina, when you worked for a contractor, what system did you use to account for the bills at the end of the week? How did you pay your bills? From what?

A I have my bills prepared from the work ticket of every day that I worked as an individual work ticket that they sign on the job.

Q Did you use that system when you worked for Paterno & Sons, Inc. at all the jobs you worked at?

A I use them with all contractors I work for.

Q Were you paid for the services that you performed for Paterno & Sons, Inc.?

A Yes, sir.

Q How were you paid, sir?

A By check.

Q Did you ever cash any of those checks at the Royal National Bank in the Bronx?

A No, sir.

Q Did you ever cash any of those checks at Vin Rao's Bar in Manhattan?

A No, sir.

MR. BRILL: Your Honor, aren't we back at the same place which your Honor said Mr. Rosenthal's objection would be sustained?

THE COURT: Yes. The last question seems to me to be the same question. I will sustain that objection. I will strike out the answer about Vin Rao's Bar.

Q Mr. LaSpina, was there ever a difference in the amount of money that you billed for the services you performed and the amount of check you received from Paterno & Sons, Inc.?

A No, sir.

Q And Mr. LaSpina, one last question: Have you ever operated under any other name than LaSpina Contracting Corporation?

A No, sir.

Q Have you ever billed under any other name?

A No, sir.

Q Other than that name?

A No, sir.

MR. SILVERMAN: Thank you, your Honor. I am sorry. I have no further questions.

merll LaSpina-cross (10:)

CROSS-EXAMINATION

BY MR. BRILL:

Q Mr. LaSpina, is it true that during or since 1967 you worked on and off for Paterno & Sons?

A Yes, sir.

Q You didn't work steadily for Paterno & Sons, Inc. alone, did you?

A What do you mean, yearly basis?

Q Yes.

A No, sir.

Q You had other jobs that you went to?

A If I worked, I worked from contractor to contractor. If I worked for one contractor and we had no work I called another and I would go from jobs to jobs.

Q And there were times when during the period since 1967 Paterno & Sons did not call upon you because they had other truckers?

A That I don't know.

Q All right. Is it true that on occasion you would go to the offices of Paterno & Sons to pick up your check?

A I went on one occasion only.

Q Well, do you remember that you were questioned on November 22, 1971 by Mr. Ayres, Mr. Rizzo, and

Mr. Rizzo of the Internal Revenue Service at 3519, your Honor, question and answer 186:

"Q Did you ever collect in person?

"A Once in a while. If you are in a little bit of a bind you call them and they tell you to come and pick up their check."

Do you remember making that answer?

A That I did.

Q That answer was correct, was it not?

A Well, it's quite a while ago. You asked me and I told you, I went there once to pick up a check. If you are in a bind with any contractor you call them up, if he's got it he tells you to come over and pick it up.

Q And in November 1971 your recollection of what had happened was better than it is today, is it not?

A I can't follow you on that question.

Q Was your memory better in November 1971 about these matters than it is today?

A I still can't -- I still can't answer that. I don't know what -- I can't answer that question the way you are trying to put it.

Q Is it true --

THE COURT: I didn't understand either, Mr. Brill. In that question and answer, was the reference

specifically to Paterno or was it to a general practice?

MR. SILVERMAN: What question was that?

MR. BRILL: 186.

MR. SILVERMAN: It makes no mention as to any contractor.

THE COURT: It sounded to me as though there was no inconsistency, Mr. Brill.

MR. BRILL: I am not suggesting that.

THE COURT: I don't know what you are suggesting. If you were not suggesting that,you are not supposed to be reading that question and answer.

Now, please proceed.

MR. BRILL: All right.

Q Were you asked specifically in question 164 that you worked for Paterno & Sons at Watson Avenue?

A Yes, sir.

Q And did you so reply at that time? Did you say yes, that you did when you were questioned in November of 1971?

A Yes, as far as -- yes.

Q Were you asked what kind of work you did and did you say that you dumped dirt?

A As far as the Watson Avenue job I worked there with my truck and my truck had broken down and I was

employed, and I ran the job for them as far as dispatching the trucks, where to dump from one end of the job to the other. That's what took place at Watson Avenue.

Q Andthe trucks went to various dumps?

A Right.

Q Depending on the kind of material that was excavated?

A Right.

Q And there was more than one truck used?

A At that time?

Q On that job. At that time.

A Yes. Yes.

Q Now, following your being questioned about that job, do you recall whether you were questioned about working for Paterno on Randall's Island , and you said no, sir. That's at question 172.

A I never --

Q I beg your pardon?

A What?

Q I am sorry.

A I never worked on no Randall's Island for Paterno.

Q And that's what you said at that time in November of 1972?

A Yes, sir.

Q And then you were asked about the five names that Mr. Silverman just asked you about, and whether you ever endorsed any of those names on any checks, and you said no, do you recall that, and that covered questions 173 to 178.

MR. SILVERMAN: Objection, your Honor. Will Mr. Brill ask him if he was asked a certain question, did he give a certain answer?

THE COURT: Yes, Mr. Brill. Objection sustained.

MR. BRILL: I respectfully except.

THE COURT: Mr. Brill, you and I have been together a long time, and you don't have to note your exception in the federal court and you surely know that.

Go ahead.

MR. BRILL: Well --

THE COURT: No, but let us get out of the habit because we are all very supple.

MR. BRILL: All right, your Honor. I would like some time to have a private conversation about that.

THE COURT: Some time maybe we will.

MR. BRILL: Allright.

Q Now,you told us that whenyou didn't have -- when your truck wasn't available and you were asked by Paterno for trucks in excess or more than what you had available,

mebr 3 LaSpina-cross

or when you didn't have available, you called people and they reached out to get trucks, is that right?

A I only called one person for Paterno and that wss on Morgan Avenue and Johnson Avenue. I did not do no hiring for Paterno. I wasn't a general truckman. I just hauled once.

Q Once?

A That's all. Johnson and Morgan Avenue.

Q Okay, all right.

Is it a common practice among contractors when they need a truck to call a trucker who calls other truckers to supply the truck if that trucker doesn't have one?

A It is a normal practice that you have one man that a contractor will call one man other than to be bothered nimself to call each individual owner, where the one man will reach out and get a fellow like me, get a fellow with a couple other trucks, you know, that's a fellow that's been in the business a while.

MR. BRILL: Thank you.

THE COURT: Mr. Rosenthal, do you have any questions?

MR. ROSENTHAL: I have no questions.

MR. SILVERMAN: No redirect.

THE COURT: All right, Mr. LaSpina.

(Witness excused.)

THOMAS COLANTINO, called as a witness on behalf of the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Sir, will you please keep your voice up so that everyone in the back can hear you?

What is your full name, sir?

A Thomas Colantino.

Q And where do you live, sir?

A 14 Deerfield Court, Babylon.

Q Babylon, Long Island?

A Long Island, New York, yes.

Q What is your present occupation?

A Assistant cashier, Security National Bank.

Q Were you ever employed by the Royal National Bank?

A Yes.

Q In which branch, sir?

A The most recent, 149th Street -- 326 East 149th Street.

Q During the years 1967 to 1969 were you employed at the Royal National Bank at 149th Street?

A Yes, I believe so.

Q And what was your position at that time, sir?

A Assistant cashier.

Q At that particular time and at that particular branch what was the procedure for cashing a house check?

A Well, you would ask for identification of the payee, and you would make a notation on the back of the check.

Q Mr. Colantino, I would like you to refer to Exhibits in front of you, 29, 32 and 34.

A (After examining) 29, 32 and 34?

Q Yes.

Do you recognize your initials on any of those checks, sir?

A Yes.

Q Are they on all three of the checks?

A Yes.

Q Are the checks made out to Thomas Tuccella and Anthony Ferrotta?

A Yes.

Q Do you know either of these two payees, sir?

A No.

Q Are either of these two payees, to your knowledge, clients of the bank?

A Not that I am aware of.

Q Could you describe the circumstances that led to your putting your initials or approving these checks to be cashed?

A Well, the checks were presented for incashment, and due to the amount involved we either -- I would either call the Paterno office for approval for incashment or Paterno & Sons called up in advance to tell us if someone was coming down for incashment of the checks.

Q Mr. Colantino, in relation to incashment of these two particular checks who would you call at Paterno & Sons' office? Who did yoiu speak to?

A I presumably would ask for the bookkeeper or office manager or perhaps even Mr. Paterno.

Q Do you recall speaking to George Denti about these checks?

MR. ROSENTHAL: I object to leading, if the Court please. I think this man is capable of testifying.

THE COURT: I will allow it.

(Question read.)

A No, I couldn't say who I spoke to on these occasions.

Q Mr. Colantino, I would like to show you an affidavit dated August 2nd, 1971, Government's Exhibit 3511 for identification, and ask you if you recognize that affidavit,

sir (handing).

A (After examining) Yes, it is signed by me.

Q Did you sign that affidavit, sir?

A Yes.

Q Will you please read that affidavit, sir?

MR. BRILL: To himself?

MR. SILVERMAN: To himself.

(Witness examines.)

MR. ROSENTHAL: May we have a side bar, your Honor?

THE COURT: Yes.

(To the witness) You can go ahead and read while we have it.

(At the side bar.)

MR. ROSENTHAL: I do not know whether Mr. Silverman is trying ti impeach this witness or what, but he certainly has not demonstrated any bias on the part of this witness against the government or any fact that the witness is in any way hostile to the government. And this is calling to his attention his affidavit --

THE COURT: Does the affidavit say that he spoke to Denti?

MR. ROSENTHAL: The affidavit says that he spoke to Denti and/or Michael Paterno.

mkbr 5 Colantino-direct

THE COURT: Well, he is trying to refresh his recollection.

Is that what you are trying to do?

MR. SILVERMAN: Yes, your Honor. I think the government has been legitimately surprised by his answer, and that is one element for pursing it as far as we have been doing it.

THE COURT: Yes, I think so, too.

Okay.

(In open court.)

BY MR. SILVERMAN:

Q Mr. Colantino, did you have an opportunity to read that affidavit?

A Yes.

Q When you signed this affidavit was everything contained in this affidavit true?

MR. ROSENTHAL: If your Honor please, I object to this. This is going further than what was discussed at the side bar as the purpose of showing this affidavit to this witness.

THE COURT: Yes. You may make a new objection for that reason, and you have, and it is overruled.

Q Was everything included in this affidavit true at the time you signed it?

mkbr 6 Colantino-direct

A Yes.

Q Now I will ask you the question again, sir: With reference to these checks did you speak to anyone at Paterno & Sons, Inc. prior to approving these checks for cashing?

A Well, yes. As I indicated there, I had spoken to Paterno's office and I spoke either to George Denti or Mr. Paterno, or they had called in advance -- someone in the office would have called in advance for approval of cashing the check.

Q Now in reference to these three checks what is your testimony as to whether or not you spoke to Michael Paterno in regard to cashing any one of these three checks?

A I cannot say specifically who I spoke to.

Q Would you like to look at your affidavit again, sir?

A Well, yes. I think I there mentioned more than one name --

THE COURT: Don't say what you mentioned. Just say what you remember, and if you don't remember, say that.

A Well, even as I recall I would either have called Paterno's office and get approval for incashment,

and presumably I would have spoken to Mr. Paterno or Mr. Denti.

MR. BRILL: I object to that.

A (Continuing) Or in the absence of that --

MR. BRILL: I object to whom he spoke -- he said "presumably." I move to strike that.

THE COURT: Yes, I will strike that.

MR. BRILL: Thank you.

Q I am not asking you "presumably". Did you speak to Michael Paterno with regard to cashing these three checks?

A As I say in my affidavit, I would have called their office or they would have called in advance.

THE COURT: No. Do you remember with respect to those three checks to whom you spoke about cashing them?

THE WITNESS: No.

THE COURT: That is his answer. He says he doesn't remember.

Q Do you recall, sir, in regard to these three checks speaking to George Denti, in regard to cashing these checks?

A To tellyou the truth at this stage of the game I do not recall.

MR. ROSENTHAL: I object. That has already been

answered.

THE COURT: Yes.

MR. SILVERMAN: I believe the question was asked as to Mr. Paterno.

THE COURT: No, you had better go on to something else.

Q Mr. Colantino, in regard to Exhibit No. 32, will you look at the back of that check, please.

(After examining) The back? Yes.

Q Are your initials on the back of the check, sir?

A (After examining) Yes, my initials appear.

Q Is there anything else included in the same area where your initials are?

A Yes, I have indicated another set of initials, GJA.

Q What does "GJA" stand for?

A Those are the initials of another office of the bank, Mr. Andretta.

Q What is his first name?

A Gaeton Andretta.

Q And do you recall the circumstances around the signing of this check?

A No, but looking at the check it tells me that he had given approval for the incashment of the check.

Q Sir, when these payees came into the bank with these checks did you ask identification from these payees?

A If I had gotten a previous call that these people were coming in I would not have asked for identification of the party there. If the call came from Paterno's office I would ask who was coming down and given a description of the party coming down.

Q You misunderstood my question. I said in these particular instances did you ask for identification of these payees?

A I would have to say no, because I don't see a notation on the back.

Q Would there be one if you did ask for identification?

A Yes.

Q Did you cash any other checks for Paterno & Sons, Inc. other than these three checks?

A Not that I am aware of.

MR. SILVERMAN: No further questions of this witness, your honor -- oh, I am sorry, there is one other thing I wanted to show him.

BY MR. SILVERMAN:

Q Mr. Colantino, I show you Government's Exhibit 180 for identification, and I ask you if you recognize that check (handing).

mkbr 10 Colantino-direct

A (After examining) The check of Paterno & Sons on the Royal National Bank, yes, payable to Joseph Denti.

Q Is that a check written against your bank?

A Yes.

Q I show you Government's Exhibit 182 and ask you if you recognize that (handing).

(Witness examines.)

MR. BRILL: In evidence?

MR. SILVERMAN: For identification.

A Yes, it is a bank statement of Paterno & Sons, Incorporated, payroll account for January 1968.

Q What is the date that the check was cashed, sir?

A (After examining) January 10, 1968.

Q Will you look at the bank statement for January 10, 1968?

(Witness examines.)

Q Is there any check in the amount of $383.35?

A Yes, there is.

Q And is this check written against that account?

A It is drawn on that account, yes.

MR. SILVERMAN: The government would like to offer in evidence Government's Exhibits 180 and 182.

MR. ROSENTHAL: May we see that.

(Handed to Mr.Rosenthal.)

MR. SILVERMAN: One further question, your Honor.

Q Mr. Colantino, on the reverse side of the check there is a little scribble in the right-hand corner. Do you recognize that (handing)?

A Yes, I do.

Q What is that little scribble, sir?

A The initial of Mr. Hoffmann.

Q Is that Conrad Hoffmann?

A Yes, it is.

MR. ROSENTHAL: May we have an offer of proof at the side bar, your Honor, for the receipt in evidence of this?

THE COURT: Allright, come ahead.

(At the side bar.)

MR. ROSENTHAL: This is a check --

MR. SILVERMAN: If your Honor will examine Exhibit 35, which is in evidence, on the back of the check you will notice that there is an amount of $1885.88, which is the face amount of the check. Notice, your Honor, that there is an amount, $883.35, which is the amount of this check (indicating). Your Honor will note that this check was cashed at the Royal National Bank by teller No. 9 on January 10, 1968, and you will note that this check was cashed by teller No. 9 at the bank on that particular

date.

THE COURT: Okay.

MR. SILVERMAN: That is self-explanatory.

MR. BRILL: May I see this, please?

(Handed to Mr. Brill.)

Are you through with your direct?

MR. SILVERMAN: With this witness I have just two more checks of the same type to offer -- one check.

MR. ROSENTHAL: Where do you get Teller No. 9 from?

MR. SILVERMAN: Teller No. 9, there (indicating).

THE COURT: Okay. He has told you what it is about.

MR. ROSENTHAL: All right.

(In open court.)

THE COURT: Is there any objection to that exhibit, 180 or 182?

MR. BRILL: Yes, your Honor, I object to it.

THE COURT: On what ground?

MR. BRILL: I object on the ground that it has no relevancy to the issues in trial before your Honor and this jury.

MR. ROSENTHAL: I make the same objection.

THE COURT: Overruled.

MR. ROSENTHAL: It is in no way binding on my client, George Denti.

(Government's Exhibits 180 and 182 now received in evidence.)

BY MR. SILVERMAN:

Q Mr. Colantino, I show you Government's Exhibit 181 and I ask you if that is a check drawn on your bank (handing).

A (After examining) Yes, sir.

Q I show you Government's Exhibit 183. Is that the accompanying bank statement (handing)?

A (After examining) Yes, September of 1967.

Q Will you please look and tell me what date this check was cashed, sir?

A (After examining) September 5, 1967.

Q And will you please tell me, sir, if on the bank statement that check appears.

A (After examining) Yes, it is reflected on the statement.

MR. SILVERMAN: The government offers Exhibits 181 and 183 into evidence, on the same offer of proof as it did on the other.

THE COURT: Who is the payee of Exhibit 181?

Q Who is the payee of 181, Mr. Colantino (handing)?

A (After examining) It appears to be James O'Reilly, I guess.

Q Who is it endorsed by?

A It looks to me James O'Reilly and George J. Denty.

THE COURT: I assume there are the same objections, gentlemen?

MR. ROSENTHAL: The same.

Q One question as to Government's Exhibit 180 that is already in evidence, Mr. Colantino. What is the name of the payee of this check (handing)?

MR. BRILL: We cannot listen and look at the same time, Judge. I have limitations.

THE COURT: Yes. Why don't you wait until they look at 181 and 183.

MR. SILVERMAN: Yes, your Honor.

(Defense counsel examines.)

MR. BRILL: My position is the same, your Honor. I make the same objection.

THE COURT: And I take it, without coming to the side bar, you have shown counsel a similar kind of presentation?

MR. SILVERMAN: Yes, your Honor.

THE COURT: All right; on that basis I will make the same ruling, and 181 and 183 are received.

mkbr 15 Colantino-direct

(Government's Exhibits 181 and 183 were received in evidence.)

MR. BRILL: Are they taken subject to connection, your Honor?

THE COURT: No, they are received.

BY MR. SILVERMAN:

Q Mr. Colantino, what exhibit do you have in front of you, sir?

A 180.

Q Will you please read the name of the payee on that check?

A Joseph Denti.

Q Joseph Denti?

A Yes.

MR. SILVERMAN: Thank you. No further questions.

THE COURT: All right, cross examination, gentlemen.

MR. BRILL: May we see that one, please.

(Mr. Silverman hands.)

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Mr. Colantino, I show you Government's Exhibit 181. Is there anything on that check that indicates any bank officer approved it for cashing (handing)?

mkbr 16 Colantino-cross

A (After examining) No, there is no official approval.

Q And might that be because of the fact that George J. Denti's endorsement appears thereon?

A (After examining) I would suppose yes.

Q What, sir?

A I would suppose yes.

Q There is no question that Mr. Denti was known at the bank, is there?

A No question.

Q By yourself and by other officers and by the tellers?

A I would say yes.

MR. ROSENTHAL: Now may I have the other checks.

MR. SILVERMAN: These checks?

MR. ROSENTHAL: The one for the same date as this (indicating).

(Mr. Silverman hands.)

BY MR. ROSENTHAL:

Q Now Government's Exhibit 180 and Government's Exhibit 181; Government's Exhibit 182 and Government's Exhibit 183, which are bank statements, they all apply to the payroll account, do they not, of Paterno & Sons (handing)?

A (After examining) Yes.

Q Now Mr. Colantino --

MR. ROSENTHAL: If your Honor please, I am going to ask this witness something that was not asked on direct examination, and I assume I am making him my witness for this purpose.

Q There has been testimony in this case, Mr. Colantino, concerning the rules and regulations of the Royal National Bank in respect to certification of checks.

Now am I correct, sir, in assuming that anyone who presents a check drawn upon your bank is entitled to certification of same?

A The maker of the check certainly is, and the payee probably will have it certified if the bank sees no objection in certifying it.

Q And if there is no stop payment or anything of that sort, and there is sufficient money in the account your bank will automatically certify it, will it not?

A If the signature is proper and the funds are available and the check is otherwise in good order, yes.

Q Now the actual act of certification consists of putting on a rubber stamp on the face of the check, does it not?

A A stamp goes on there, yes.

mkbr 18 Colantino-cross

Q And the teller physically does that, doesn't he?

A That is correct.

Q Whether it be a male or female teller, the teller does it, is that correct?

A That is correct.

Q And as I understand it, in connection with your bank, the Royal National Bank, if the check is for less than $2500 the teller has authority to sign the certification?

A The head teller does, and the assistant head teller, yes.

Q The head teller does?

A Yes.

Q If the check is for more than $2500 and is being certified for an amount greater than $2500 who must sign the certification?

A Then it must be officially signed.

Q By an officer?

A Yes, sir.

Q Such as yourself?

A Yes, sir.

Q Such as Mr. Hoffmann?

A Yes.

Q Mr. Andretta?

A Any officer of the bank.

Q And do the officers that are on what I think they call the platform, do they change from time to time or from hour to hour for that matter?

A Not from hour to hour, but from time to time, yes.

Q So that you might be available on one morning; Mr. Andretta one afternoon or Mr. Hoffmann another morning, is that correct?

A That's quite possible.

MR. ROSENTHAL: Thank you.

MR. BRILL: I have no questions.

MR. SILVERMAN: I do not see the relevance of those questions. I move to strike those questions and those answers.

THE COURT: Well, I am not sure. We will leave it.

You have no redirect?

MR. SILVERMAN: No.

THE COURT: All right, Mr Colantino.

(Witness excused.)

THE COURT: We are going to stop at this time, ladies and gentlemen, for the day and for the week.

I am supposed to remind you from time to time not discuss the case between court sessions, so please don't.

mkbr 20

We are scheduled to resume at 10 a.m. on Monday.

I need not tell you that if inevitably one of us is late a lot of us are kept waiting. I just urge you all and us all to bend every effort to be prompt so that we can move this case along, as I think the lawyers are trying to do.

Have a good weekend and I will see you Monday.

THE CLERK: The jury is excused until 10 o'clock Monday morning.

(Adjourned to Monday, February 11, 1974, at 10 a.m.)

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United States of America
v. 73 Cr. 410
Michael Paterno, George Denti
and Paterno & Sons, Inc.

New York, February 11, 1974
10:00 a.m.

- - -

(Trial resumed.)

- - -

(In open court; jury not present.)

MR. BRILL Could I take just a moment of your Honor's time?

On Friday, during the cross examination of Mr. Capossela, at page 428 of the transcript, Mr. Silverman requested a side bar conference. At that time he informed your Honor that he had been advised by Mr. Ayres that there had been a subpoena issued by the government to Paterno & Sons, Inc. requesting that all invoices of all trucking companies that did business with Paterno & Sons, Inc. over the years in question be furnished.

I told your Honor that I was unaware of that. I was aware of a subpoena which had been served on Michael Paterno in December of 1972, returnable January 2, 1973, calling for, and I quote:

"all job cost sheets during the period from

March 1, 1965 until February 28, 1970 of Paterno & Sons, Inc."

Upon receipt of that I called Mr. Friedman, who was then the prosecutor in charge of this case, and advised him that we had received the subpoena addressed to Michael Paterno, the individual, and that it called for corporate records. I told him that we would dig out the records that existed and on the return date would produce them, and request that he furnish us with an appropriate subpoena addressed to the corporation.

He did that on January 2nd -- I have that subpoena which is addressed to Michael Paterno as president of Paterno & Sons, Inc. -- and again it calls for:

"All job cost sheets of Paterno & Sons, Inc. during the period from March 1, 1965 till February 28, 1970."

The subpoena was complied with. Mr. Paterno appeared before the grand jury, and he presented the records that he had, and testified that all those that had been called for were produced.

I called that to Mr. Silverman's attention by telephone yesterday, and I make this statement to your Honor so that the record can be straight with respect to that.

THE COURT: Do you have anything to say about that?

MR. SILVERMAN: Well, your Honor, the substance of what I said -- I haven't read the minutes -- was that certain documents were requested by subpoena, and certain documents were requested over this period by request. It is my understanding -- and it may be inaccurate at this time -- that the invoices requested by subpoena covered daily portions.

Also we have in our possession some invoices from the corporation. It was my understanding, speaking to the attorney who previously handled the case, that all invoices had been requested whether formally or informally. I examined my filed. We had some invoices but we do not have those. That is the reason the request was made.

THE COURT: All right, that is an adequate presentation, I take it, of your respective positions on the record as to what the history is.

As to the situation now, in the course of that side bar conference I directed the defendant corporation, through counsel, to see that all invoices of the kind we were discussing were produced to the government, and I take it that has been done.

MR.BRILL: They have just been brought into court today, and I propose to put them all in evidence, your Honor.

THE COURT: If you propose to put them all in evidence, that is fine. If they are not received in evidence they will be delivered to the government in any event, in accordance with my direction.

Let us proceed.

Are you ready to call your next witness?

MR.SILVERMAN: Yes.

THE COURT: All right, let us have the jury, please.

slbr

(Jury entered the courtroom.)

THE COURT: Good morning, ladies and gentlemen.

B E A T R I C E W E I S E N B E R G, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q May I request, please, that you keep your voice up so that the people in the back here will be able to hear you?

A Yes.

Q What is your full name?

A Beatrice Weisenberg.

Q Where do you presently reside?

A 1110 Carroll Place, in the Bronx.

Q What is your occupation?

A Assistant head teller.

Q Where are you employed?

A At Security National Bank, 149th Street office.

Q How long have you been employed at the Security National Bank?

A It will be 17 years in October.

Q Is it accurate to state that you were employed by Royal National Bank before it was taken over by

Security?

A Yes.

Q At what branch are you presently employed?

A 149th Street.

Q How long have you been employed at that branch?

A All the time I have been working for the bank.

Q What is your present title at the bank?

A Assistant head teller.

Q Now, as assistant head teller at the bank is there a particular code or letter that is assigned to you?

A Yes, a number.

Q What is that number?

A 2.

Q And how long have you used the No. 2?

A It will be eight years. In May 1966.

Q May 1966?

A Yes.

Q Now, prior to May of 1966 were you assigned a number or a code?

A I was teller No. 3.

Q During the period of May 1966 until 1970 you were teller No. 2, is that correct?

A Yes.

Q During that period of time who was teller No. 1?

A Rose Muscatello.

Q Was she teller No. 1 continuously during that period?

A From 1966 on, yes.

Q Now, did she become head teller when you became teller No. 2?

A Yes.

Q Now, when is this teller's number used, if at all?

A Every day.

Q In what process are they used?

A For validating deposit tickets, checks that we cash.

Q On what side of the check, on the front or on the back of the check is your teller's number affixed?

A On the front of the check if the check has been cashed.

Q Would you describe to the ladies and gentlemen of the jury what is known in the bank as a slug?

A That is a validating key.

Q Where is that slug kept during the day?

A In the machine, in our validating machine.

Q Where is that slug kept at night?

A In our cash box in the vault.

Q Now, who besides yourself at the bank has the

combination to your cash box?

A To my cash box? No one.

Q What would happen in case something happened to you, how would they get to that slug?

A Well, we all have our own combinations, our own vault combinations. They would have to call the main office and get our combination from them. An officer would have to call.

Q I would like you to look at these four exhibits, Government's Exhibits 21, 29, 32 and 33 and ask you if your teller's stamp appears anywhere on those four checks.

A Yes, it does on all four.

Q Now, by examining these four checks can you determine whether or not these checks were cashed or deposited?

A They were all cashed.

Q How do you make that determination?

A Because my validating key is on the front of it, on the face of the check.

Q Now, do you know what the difference between an inside and an outside check is?

A I think so.

Q Are these inside or outside checks?

A These are inside checks.

Q Now, during the period of time from 1965 to 1970 was there a bank policy in your bank as to cashing checks?

A I am sorry, I don't quite understand that.

Q During the period of time from 1965 until 1970, during that period of time was there a bank procedure or policy that a teller must follow in order to cash a check?

A Well, yes.

Q Can you tell the ladies and gentlemen of the jury what that policy was?

A First of all, the payee comes in with our check; we send him to an officer for endorsement identification and okay. After the check is okayed the customer will come back to our window; we will verify the signature of the maker; we will verify the balance on the books, and if all is in order, the okay is on the back, we cash the check.

Q Now with reference to Exhibits 21 and 29, who were the payees of those two checks?

A Anthony Ferrotta -- they are both Anthony Ferrotta.

Q Do you know the payee Anthony Ferrotta?

A No, I don't.

Q Do you remember what he looks like?

A No, I have no idea.

Q Who approved Exhibit 21 for cashing? What officer?

A Mr. Hoffmann.

Q And who approved Exhibit 29 for cashing?

A Mr. Colantino.

Q By examining the back of Government's Exhibit 21, by examining the back of that check can you determine the amount of cash and the denominations of cash of how that check was paid out?

A Yes.

Q How do you make that determination?

A Well, I have it broken down on the back.

Q What do you mean you have it broken down? Will you describe to the ladies and gentlemen of the jury what the figures are on the back of the check you are referring to?

A The check is for $3,520, and I have "20" which possibly was either two tens or a twenty. And 3500, I have "100" beside it, which means I gave out 35 $100 bills and a 20, or two tens.

Q Now with refernece to Government's Exhibit 29, by examining the back of that check can you make a determination as to what denominations the money was paid out at?

A Not positively. I can only guess.

Q What figures are you looking at on the back of the check now?

A Well, I started out with "4", which must have been four singles; and then I have "115, 1000, 1000 and 5000. The 5000 may have been in hundred dollar bills. The 1000 may have been in 50s and 1000 may have been in 20s. I can't say, I didn't liste it on here.

Q By examining that check can you tell whether or not you paid out cash or whether you gave a bank check or another form?

A This was cash.

MR. BRILL: Your Honor, except for the latter answer I move to strike out the testimony concerning this particular check as being speculative.

THE COURT: Well, I will allow it. The point is it was paid out in cash, is that right?

THE WITNESS: Yes.

THE COURT: All right.

Q I would like you to examine Government's Exhibits 32 and 33. Who was the authorized signature on 32?

A The maker of the check?

Q Yes.

A Mr. Paterno.

Q What about on 33?

A Same thing.

BY MR. SILVERMAN:

Q Who is the payee on those two checks?

A Thomas Tuccella.

Q Do you know Thomas Tuccella?

A No, I don't.

Q You don't remember what he looks like?

A No, I have no idea.

Q I'd like to show you Government's Exhibit 132 and ask you to examine the back of the check.

THE COURT: Is it 132?

MR. SILVERMAN: I'm sorry, 32, your Honor.

Q I ask you to examine the back of the check and by examining the back of the check, can you determine whether or not any other check was cashed at the same time as you cashed that check?

A This one?

Q Yes.

A Yes, I would say there were two checks.

Q And what was the amount of the other check?

A $132.50.

Q And what was the total amount of cash that you paid out between Government's Exhibit 32 and the other check of $132.50?

A $2141.86.

Q Now I'd like to show you Government's Exhibit 33 and ask you at the time you cashed this check for $1436.86, whether or not you cahsed anv other check at that time?

A There were three checks.

Q And what was the amount of the other two checks that you cashed that check?

A $15.55 and $242.70.

Q I'd like to show you Government's Exhibit 181 -- withdrawn.

Could you please tell the ladies and gentlemen of the jury on what date Government's Exhibit 33 was cashed?

A August 18, 1967.

Q That's the -- is that the date of it was cashed or is that the date that it was drawn?

A For this, I'm sorrv, I need mv glasses.

MR. BRILL: What was that? I didn't hear.

MR. SILVERMAN: She said she needed her glasses.

A No, this was cashed on September 5, 1967.

Q I'd like to show you Government's Exhibit 191 and ask you what date that check was cashed?

MR. ROSENTHAL: Which check?

MR. SILVERMAN: 181.

A Also September 5, 1967.

Q And by what teller was Government's Exhibit 181 cashed?

A I cashed it.

Q And what is the amount of this check?

A $242.70.

Q And who is the payee of Government's Exhibit 181?

A James O'Reilly.

Q Do you know who James O'Reilly is?

A No, I don't.

MR. SILVERMAN: I have no further questions, your Honor.

MR. BRILL: We are going to try to avoid duplication, your Honor.

CROSS-EXAMINATION

BY MR. ROSENTHAL:

Q Mrs. Weisenberg, do you know who are the authorized signators on Paterno & Sons, Inc.'s account?

A The only signature that I was familiar with is Mr. Paterno's. I don't know if anyone else is authorized to sign on that account.

Q Now, Paterno & Sons did have two accounts in

your branch, did they not?

A I am not too sure of that either, sir.

Q Well --

A I see two different type checks.

Q Right. One is a payroll?

A Yes, there are two different ones. The account numbers are different.

Q And as you sit there now, you don't know whether these authorized signatures were the same as authorized on the two accounts, do you?

A No, sir, I don't.

Q Do you know every person who has an account with the Security National at your branch?

A I couldn't possibly know that. Not everyone.

Q And did you know personally everyone who came to you when going to cash a check?

A Do you mean the payees?

Q Yes.

A No, sir.

Q Or the person presenting the check?

A No, sir.

Q Now I think you told us that the usual practice was for the payee to come to your window and you would in turn direct them to where one of the officers

had a desk for him to approve payment, is that right?

A Yes.

Q And is it fair to assume that if a payee or a person presenting a check had been to the bank before, or was familiar -- I will withdraw that.

That's more or less general procedure for all banks, is it not?

A It is for our bank.

Q Right. And is it fair to assume that a person who has been to the bank before and is familiar with the procedure, instead of going directly to your window, might not he or she go directly to where one of the officers is sitting to get it approved?

A It's very possible.

Q So that when they presented -- when they would present the check to you, that would be it, you would only be seeing the person the one time when they presented the check? Do you follow what I am saying?

A Not really, because --

Q Well, let me break it down.

I walk into the 149th Street branch of Security National Bank, and I have a check drawn on an account in that bank. I do go one of the officers before I ever go to any teller, and he is satisfied and he okays

it by initialling it on the back. I then go either to your window or the window of any other teller that might be there, is that correct?

A Yes.

Q And my only contact with the teller would be when I present the check?

A Yes.

Q Now, might I on some occasions go to your window and you advise me that I need approval and I go to an officer and have it approved, and perhaps you developed a long line by then. I could then present it to any other teller, could I not?

A Yes.

Q And as you sit there now you have no independent recollection of cashing any of these checks, do you?

A No, I don't.

Q And the only reason it's caused you to say that you did in fact cash them is the fact that your slug, or I think that's what you call it --

A No, sir, my figures are on the back of this.

Q Your figures are on the back?

A These are my figures.

Q And also your --

A My stamp.

Q Your stamp is on the front. That stamp is sort of like an electric clock where you just put it in?

A Yes.

Q And by impulse it stamps it, is that right?

A Yes.

Q You don't have to hammer it down or anything of that sort?

A No.

Q And every teller in your bank has a similar one, is that correct?

A Yes. With their own number.

Q Yes.

Does that carry the date also?

A No, the machine does.

Q I say, does it register the date on the face of the check?

A The machine registers the date, not the slug, the machine.

Q And you don't have to check that every day, that's automatic?

A No, we change it every night.

Q The date?

A Yes.

Q It does not show the hour of the day or the time

when any particular check is cashed, does it?

A No.

Q Now, I think -- and I want to look at these to be certain -- now I call your attention to the back of Government's Exhibits 21 and 32 where there appears the initials of officers. Is there also a number there?

A Yes, it's our code number.

Q And that is a number that would be assigned to a particular officer for the day or for the week?

A For the day.

Q For the day. And it's a code number that the bank has developed?

A Yes.

Q Is that correct?

A Yes, sir.

Q And the purpose of that is to avoid someone who has become familiar with the routine of the bank and familiar with the scroll nad initials of a particular officer from attempting to forge it and fool the teller, is that right?

A Yes, sir.

Q And unless the proper number was there, despite the fact that the initials looked the same normally the teller would reject it?

A We would question it.

Q Question it.

Now, for instance, on Government's Exhibit 29, the initially and the code number is on the face of it, is that right?

A Yes,sir.

Q However, I notice on 33 apparently no code number was put with the initial, is that correct?

A Yes, sir.

Q Now -- that's Mr. Hoffmann's initial?

A Yes, sir.

Q And I understand that Mr. Hoffmann had a position right -- when I say position, I mean a physical position in the bank -- that was right near the teller's window, was it not?

A No, sir.

Q Well, would he frequently be near the teller's window?

A He would come up and ask us questions, but he was not near our window.

Q I see. Might there come a time when he would just -- I will withdraw that.

Have you had occasions when an officer has okayed a check and walked over with the party presenting

it to the window and handed it to you?

A This has happened on occasion.

Q And when that happened, you don't need the number, do you?

A Well, I would say no.

Q All right.

MR. ROSENTHAL: Would your Honor give me a half a minute.

MR. SILVERMAN: Excuse me, while we pause, may I take a look at one of those checks?

THE COURT: Yes.

Q I call your attention to Government's Exhibit No. 32. Will you look at the signature, the authorized signature on that check.

(Witness examines.)

Q That is not Mr. Paterno's signature?

A No, sir, it is not.

Q Is it Thomas Cohill?

A I have no idea what it is, but it isn't Mr. Paterno's signature.

Q And do you know, as you sit there now, are you aware of the fact that Mr. Cohill was also an authorized signator of Paterno & Sons?

A I must have known that; otherwise I would not have cashed this check.

MR. ROSENTHAL: All right, thank you. I have no further questions.

THE COURT: Anything else, Mr. Silverman.

MR.SILVERMAN: Does Mr. Brill have any questions?

MR. BRILL: No, your Honor.

MR. SILVERMAN: No redirect.

THE COURT: All right, Mrs. Weisenberg.

(Witness excused.)

V I N C E N T R A O, called as a witness on behalf of the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Rao, will you please keep your voice up so that the people in the back will be able to hear you, sir.

What is your full name?

A Vincent Rao.

Q And what is your occupation, Mr. Rao?

A I own a bar and grill -- bar, grill and restaurant.

Q What is the name of that bar and grill?

A Rao's Bar & Grill.

Q And where is it located, Mr. Rao?

A 455 East 14th Street.

Q Is that Manhattan?

A Manhattan.

Q How many hours a day does your restaurant operate, approximately?

A From 1 to 2, 3 or 4 -- one in the afternoon to four in the morning.

Q How many days a week?

A Seven.

Q And are you an active owner or are you a silent

partner?

A I am active -- I am the owner.

Q Approximately how many days a week are you there in the restaurant?

A Seven days.

Q Other than the drinks that you provide for your customers do you provide your customers with any other type of accommodation?

A Yes, we cash checks for an accommodation.

Q Approximately, sir, how many days a week do you cash checks for customers?

A Well, I would say five or six days a week.

Q Do you charge any fee --

A No.

Q -- for cashing the checks?

A No.

Q Have you ever charged a fee for cashing the checks for any of your customers?

A No.

Q Can you give us some idea, sir, approximately the amount of the checks that you usually cash?

A The amount?

Q Are we talking about checks for $10 or are we talking about checks that have a greater value?

A All amounts, up to 3 or 4 or 5,000.

Q Do you cash checks for anyone other than customers who frequent your restaurant?

A Yes.

Q Who do you do that for?

A Park Department, Washborn Wire Factory -- Park Department, Police Department -- anybody that's that gets stuck with checks they come down to my place and they cash the check.

Q Do you maintain a record or a ledger of the checks that you cash?

A No.

Q Mr. Rao, I would like to show you Government's Exhibits 24, 26, 36, 38, 39, 41, 42, 43 and 45, and I ask you, sir, if you recognize those checks (handing).

A Yes.

Q How do you recognize them, sir?

A By my stamp and my signature on the back.

Q Didyou cash or deposit all of those checks?

A Yes.

Q In what bank did you negotiate these checks?

A First National City, 116th Street branch.

Q On the back of check No. -- on the back of Government's Exhibit No. 26 --

(Witness examines.)

Q Is there anything written on the back of that check, sir, other than your endorsement?

A Yes, it says "Red" here.

Q Do you know who wrote the word "Red"?

THE COURT: Did you say "No"?

THE WITNESS: I think I wrote that.

Q Do you know what the word "Red means on that check?

A It might have been one of the fellows called Red.

Q Do you recall who Red is?

A No.

Q Now who is the payee of that check?

A The payee.

Q Yes, sir.

A Of that one check?

Q Of Government's Exhibit 26.

A Paterno -- the payee or the name on top?

Q The payee.

A Anthony Ferrotta -- is it?

Q Ferrotta?

A Ferrotta.

Q I would like you to look at Government's Exhibit 38.

(Witness examines.)

Q Is there any writing on the back of that check other than your endorsement and the stamp?

A Marty.

Q An who wrote that?

A I don't know. I didn't write that.

Q Did you write the word Mary?

A No.

Q Do youknow who the word Marty refers to?

A No.

Q Who is the payee on that check, sir?

A Thomas Tuccella.

Q Tuccella?

A Is it T or F? I wouldn't know.

Q I would like you to look at Government's Exhibit 4.

(Witness examines.)

Q Is there any writing on the back of that check, sir, other than your endorsement?

A (After examining) It says "Red fr" -- friend.

Q What does "Red fr" mean?

A It must be Red's friend.

MR. BRILL: I object to that as a guess. "It must be" he says.

THE COURT: Whose handwriting is it?

THE WITNESS: What?

THE COURT: Whose handwriting is it?

THE WITNESS: I don't know whose handwriting that is. It must be "fr" -- it could be anything. I just take it for granted, sir.

THE COURT: All right, strike it out.

Q Do you know who "Red fr" refers to?

A No.

Q Mr. Rao, do you recall the circumstances around your cashing of these checks?

A Like what?

Q Do you recall the circumstances surrounding it? Do you recall what caused you to cash those checks?

A Well, I don't know who these people are but they must have come in with somebody that I know or I knew.

Q Do you know of anyone --

MR. BRILL: I move to strike that, if your Honor please, again speculative.

THE COURT: No, I will allow it.

Q Do you know anyone named or nicknamed Red that frequents --

A No.

Q -- your place of business?

555

A No, not any more. The section --

Q During that period --

MR. BRILL: May we have the last answer, please?

THE COURT: He said "No, not any more".

Is that what you said?

THE WITNESS: Yes.

Q Mr. Rao, during that period of time when that check was cashed by you -- at that time did you know anybody by the name of Red?

A Well, there were so many Reds around in those days that I wouldn't know which one brought this thing here.

Q During that period of time, sir, when you cashed that check having the word Marty on the back, do you know or did you know anyone by the name of Marty?

A No.

Q Do you know what"Red fr" -- what that refers to, do you know who that refers to?

MR. BRILL: That is the same thing.

THE COURT: No, just answer. Do you know?

THE WITNESS: No, I wouldn't know.

Q Do you know the payee,Anthony Ferrotta?

A No.

Q Do you know the payee, Michael Catenzaro?

A No.

:d.

Q Do you know the payee, Thomas Tuccella?

A No.

Q Did you ever know anyone by those names?

A No.

Q Do you know the defendant Michael Paterno?

A Who?

Q The defendant Michael Paterno.

A No.

Q Do you know the defendant George Denti?

A No.

Q Do you know anyone who works for Paterno & Sons, Inc.?

A I don't know anybody.

Q Have you ever met either of these two men?

A Have I what?

Q Ever met any of these two men --

A No.

Q -- Mr. Paterno or Mr. Denti?

A No.

MR. SILVERMAN: I have no further questions, your Honor.

MR. BRILL: I have no questions, your Honor.

MR.ROSENTHAL: Neither have I.

THE COURT: All right, Mr. Rao, you are excused.

(Witness excused.)

MR. SILVERMAN: Your Honor, while we are waiting for the next witness I have a stipulation that I would like to read to the jury. This is Government's Exhibit 79.

This is a stipulation between myself, Mr. Brill and Mr. Rosenthal. It states:

"that if Timothy Fiori were called as a witness, he would testify as follows:

"1. On June 30, 1971 he was an investigator with the New York Telephone Company.

"2. On or shortly before January 23, 1974 a search was made of the records maintained by the New York Telephone Company to determine the identity of the subscriber to the following telephone numbers:

"a. JA 3-0400

"b. OL 6-8454

"c UN 4-4462

"d 516-488-2670

"e. 516-HA 8-7500

"3. A search of the above records maintained by the New York Telephone Company disclosed the following information:

"a. The telephone number JA 3-0400 has been subscribed to by a Brian Keller, 175-06 Devonshire Rd.,

Jamaica since July 1969. There is no record of subscription of this telephone number during the period October 1966 through July 1969.

"b. The telephone number OL6-8454 has been subscribed to by the Port of New York Authority since February, 1968. There is no record of subscription of this telephone number during the period March 1967 through February 1968.

"c. The telephone number UN 4-4462 has been subscribed to by Dinny Tong, 250 West 108th Street, New York City, N.Y. since June, 1959.

"d. The telephone number 516-488-2670 has been subscribed to by Salvatore Toscano, 200 McKee St., Floral Park, N.Y. since January 1962.

"e. There is no record of subscription to the telephone number (516) HA 8-7500 during the period March, 1965 through December, 1967."

THOMAS J. BURKE, called as a witness in behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Burke, may I just please ask you, sir, to keep your voice up?

A Yes.

Q What is your full name, sir?

A Thomas J. Burke.

Q By whom are you presently employed?

A New York Compensation Insurance Rating Board.

Q What is your position with them, sir?

A I am a superintendent of the rating department.

Q How long have you been with the rating board?

A 35 years.

Q Now, the Compensation Insurance Rating Board, is that a private or a public organization?

A It is a private organization.

Q Is that board licensed by the State of New York?

A It is licensed by the Superintendent of Insurance.

Q What are the functions and the responsibilities of the Workmen's Compensation Rating Board?

A We are a rating and a statistical organization. By that I mean we receive copies of policies which are issued by the various and numerous carriers which are authorized to write compensation insurance. We are required to keep certain statistics and records, and we in certain cases rate them on the basis of their own experience to determine whether they are subject to an increase or a decrease in rate.

Q Who actually sets the rates as to what these insurance carriers charge the employers for their Workmen's Compensation Insurance?

A The New York Rating Board calculates their rates and submits them to the Superintendent of Insurance for approval.

Q Who are members of the rating board?

A All insurance carriers who are licensed and authorized to write compensation insurance in the State of New York.

Q Now, how many Workmen's Compensation Rating Boards are there in New York State?

A One.

Q And that is your organization?

A That is our organization.

Q Now, under the New York State Insurance Law

who was required to carry Workmen's Compensation Insurance?

A Any eligible employer who employs one or more employees in a hazardous occupation, which are listed in the Workmen's Compensation law.

Q Is the trucking business listed as a hazardous occupation?

A Yes, sir.

Q What type of records does the New York Workmen's Compensation Rating Board maintain?

A We have several types. We have an index system; we have a computer system; we have a microfilm system, and in certain cases individual file folders.

Q Now, did you cause a search to be made to determine whether or not certain individuals had Workmen's Compensation Insurance in New York State?

A Yes,sir.

Q Now, were those names Anthony Ferrotta, Michael Catenzaro, Arthur Lazravitch, Thomas Tuccella and John Aurrichio?

A Yes, sir.

Q And what was the result of the search that you made?

A Our office has no record of having any of these people -- of the carriers filing compensation insurance

policies for them. We haveno record of the names.

Q Did you also cause a search to be made to determine whether or not Paterno & Sons, Inc. has Workmen's Compensation?

A Yes, sir.

Q What was the result of that search?

A We found they had insurance with the Hartford Accident Indemnity Company.

MR.SILVERMAN: Thank you very much, Mr. Burke.

I have no further questions, your Honor.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q Mr. Burke, is a self-employed person required to carry Workmen's Compensation Insurance for himself?

A If he has no other employees, no, sir.

Q And as you sit there now, do you know whether any of the people whose names were read to you by Mr. Silverman, whether or not they were self-employed without any other employees?

A No, sir.

Q Now, sir, if I were to act as a broker or a commission person and brought together independent contractors with another firm, would I, as the broker or commission man, be required to carry Workmen's Compensation Insurance?

A That is not within the jurisdiction of the New York Rating Board to determine, sir.

Q It is not within your jurisdiction?

A Not within our jurisdiction to determine.

Q So you wouldn't find any record of my having Workman's Compensation Insurance under these conditions, would you, sir?

MR.SILVERMAN: Objection, your Honor. That is not for the witness to determine.

THE COURT: Sustained.

Q Well, do you know, sir, whether or not the compensation laws require such person to carry insurance?

A Which person, sir?

Q A commission broker, a person who has no employees of his own and merely brings together various independent contractors with other people?

A If he is a self-employed person and has no employees -- the Workmen's Compensation law only covers employees, and he is not an employee.

Q And there are people, are there not, sir, who are independent contractors?

A Yes, sir.

Q And if he brought together independent contractors that carried Workmen's Compensation Insurance, there would

be no way of you knowing who that person was?

MR.SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

Q Now, your many years with the New York Compensation Insurance Rating Board, have you heard of instances of people who are required to carry Workmen's Compensation but, in fact, did not do so?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

Q Well, you have said that you had searched your records and found no record of the five names read to you by Mr. Silverman as having Workmen's Compensation Insurance policies, is that correct?

A We found no record of them, yes, sir.

Q Will you say, sir, that those were the only people in the State of New York during the period mentioned who did not carry Workmen's Compensation Insurance?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

Q As you sit there now, sir, do you know whether or not the five names that were read to you, whether or not they were self-employed people?

A No, sir, I do not.

Q Do you know whether or not under the laws of

the State of New York they were required to carry Workmen's Compensation Insurance?

A That's not within the jurisdiction of the New York Compensation Insurance Rating Board. That belongs to the Workmen's Compensation Board of the State of New York.

Q But if they were not required to you would not expect to find policies, would you?

A No, sir.

MR. ROSENTHAL: I have no further questions.

MR. SILVERMAN: No redirect, your Honor.

THE COURT: All right, Mr. Burke.

(Witness excused.)

MR. SILVERMAN: Mr. Minichino.

MR. ROSENTHAL: May I approach the bench with Mr. Silverman, your Honor?

THE COURT: Yes.

MR. ROSENTHAL: It has nothing to do with this case.

(At the side bar between Court and counsel off the record.)

(In open court.)

SALVATORE MINICHINO, called as a witness in behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Minichino, may I request, sir, that you keep your voice up so that the people in the back can hear you?

A Yes.

Q What is your full name?

A Salvatore Minichino.

Q Are you also known as Teddy Minichino?

A Yes.

Q Where do you presently reside, sir?

A Howard Beach.

Q What is your present occupation, sir?

A I own trucks.

Q How long have you been in the trucking business?

A 15 years.

Q Do you presently operate, sir, under your own name or under a corporate name?

A Corporate name.

Q What is the name of the corporation?

A Taff Trucking.

Q Will you please spell Taff?

A T-a-f-f.

Q What is the address of the Taff Trucking?

A 163-19 95th Street, Howard Beach.

Q Was Taft Trucking ever located on Yates Avenue in the Bronx?

A Yes.

Q How long have you operated under the name of Taff Trucking?

A I would say about six years.

Q Now, prior to your operation of business under Taff Trucking, under what name did you operate?

A Sal Minichino.

Q And business address did you use for Sal Minichino?

A Yates Avenue -- Howard Beach -- no. Yates Avenue.

Q Now, Mr. Minichino, during the years 1965 to 1970 under what name or names did you operate your trucking business?

A Taff.

Q During that particular period of time did you also operate under the name Minichino?

A What year was that again?

Q Excuse me?

A What year?

Q 1965 to 1970.

A Taff.

Q Did you ever live on Allerton Avenue in the Bronx, Mr. Minichino?

A No.

Q Did you ever use it as a billing address?

A No.

Q What type of trucking work does Taff Trucking perform?

A Haul excavation work.

Q Could you explain to the ladies and gentlemen of the jury what you mean by haul excavation work?

A When they dig a hole I take the excess away.

Q Now, you work as a subcontractor for contractors, is that correct?

A I'm a rental outfit, not a subcontractor.

Q What are the names of the two or three major contractors who you worked for during the period 1965 to 1970?

A Paterno, D'Amico and Mascali.

Q Is that Frank Mascali & Sons?

A I don't know if it's Frank Mascali -- yes, Frank Mascali & Sons.

Q When you Paterno, you mean Paterno & Sons, Inc.?

A Right.

Q Now, how long have you been working, since what year have you been working for Paterno & Sons, Inc.?

A I don't know how long, pretty long.

Q Approximately how many years, sir?

A Oh, I could say the job, the Watson Avenue job.

Q Where is Watson Avenue located?

A In the Bronx.

Q Who at Paterno & Sons, Inc., if anyone, did you contact as to getting the particular job that you started, the Watson Avenue job?

A Well, it was through the trucker that I got to Paterno.

Q What was the name of the trucker that got you the job with Paterno?

A Well, it was -- oh, at that time it was Ray Regna.

Q Ray Regna?

A Yes.

Q Now, during the years 1965 to 1970, how many trucks did you own?

A About six, seven.

Q And how many trucks do you own now, sir?

A Nine.

Q Now, did you have several steady drivers employed by your company?

A Off and on, yes.

Q I am referring to the years 1965 --

A Not really.

Q -- to 1968.

MR. BRILL: Can't hear the witness, your Honor.

THE COURT: Can you speak a little louder?

A Not really.

Q Where did you obtain the drivers to drive your trucks?

A From Local 282.

Q Now, during the period 1965 to 1970, did your company have a contract with the union?

A Yes.

Q And did you make payments on behalf of these drivers to the union?

A Oh, yes.

Q Now, what were these payments for thatyou made to the union?

A They were benefits.

Q Were they pension and welfare benefits?

A Yes.

Q Do you know what area, what geographic area Local 282 covers?

A The five boroughs.

Q And do you know if it also covers Nassau and Suffolk?

A Yes.

Q Have you done any trucking work, any trucking rental work, for any contractor outside of the five boroughs, Nassau and Suffolk?

A No.

Q Excuse me?

A No.

Q You mentioned the Watson Avenue job. Is that the first job you worked for Paterno & Sons?

A Yes.

Q Did you work for them on the Johnson-Morgan Avenue job?

A I did.

Q And did you work for them at the Cedarhurst job?

A I did.

Q Did you work at the Carmel job?

A No.

Q What about the Rockaway job?

A No.

Q Did you know a trucker by the name of Sam LaSpina?

A Yes.

Q Did he also work at the Watson Avenue job?

A Yes.

Q Was he on the job before you or did he come after you?

A Before me.

Q Mr. Minichino, when you were working for Paterno & Sons, Inc. at any of the jobs, how did you know how many trucks to bring on a particular day?

A The super would tell us or the laborers or whoever signed the ticket last.

Q When you say whoever signed the ticket last, what ticket are you referring to?

A The workday ticket, showing that the truck was there.

Q And that last truck would be told how many trucks to bring for the following day?

A Sometimes. Sometimes.

Q And when it didn't work that way, how else would it happen?

A Well, we would get in touch with the super,

the foreman, whoever answers the phone, and he would tell us.

Q Now, were you ever requested to bring more trucks than you actually owned?

A Oh, yes.

Q By whom were you requested to bring more trucks than you actually owned?

A Other truckers.

Q Who at Paterno & Sons, Inc. would make this request?

A Well, they would make it to me. And I would try to get other truckers to come.

Q What are the names of the people, or the job responsibilities, at Paterno & Sons, Inc., who asked you to bring more trucks?

A Like I says, either the super, whoever answered the phone, the foreman, laborer sometimes.

Q Do you remember the names of the truckers who you got when you didn't have enough trucks to supply Paterno & Sons?

A Not really.

Q Does the name Jimmie Cathcart sound familiar to you, sir?

A Yes.

Q Is he in the trucking business?

A No.

Q During the period 1965 to 1970 was he in the trucking business?

A I don't know.

Q And Ted Murray?

A He's in the trucking business.

Q The name Phil Ferrara?

A Right.

Q And a company by the name of Ravin Brick?

A Right.

Q Did you ever get trucks from any of those companies or individuals to supply Paterno & Sons, Inc. with?

A Oh, yes.

Q Now, did those companies or those individuals where you got the trucks to supply Paterno & Sons, Inc., did you bill them or did they bill themselves?

A Well, they bill themselves and at times I used to bill for them.

Q In what situations would you bill for them?

A Because of the union.

Q Now, during that -- withdrawn.

Would there be any consideration given as to

which truckers that you received, or that you got for Paterno & Sons, Inc., as to when the money was going to be paid to you for the services that you rendered?

A I don't follow you.

Q Would one of the factors as to which trucker that you picked to supply Paterno & Sons, Inc. with when you didn't have enough trucks, would the fact of when you were going to be paid for these services, would that at all figure in your determination as to which trucker you would pick?

A I would pick whoever was working.

MR. BRILL: Excuse me. Excuse me.

I have to object to that question, your Honor. It seems like there were three or four questions in it.

THE COURT: Overruled.

Q You may answer the question, Mr. Minichino.

A I would pick whoever ain't working.

Q How often would you bill for the services that you performed for Paterno & Sons, Inc.?

A Twice a month.

Q And how were you paid, in what form?

A On account.

Q By cash or by check?

A Oh, check.

Q And how did you receive the check?

A Through the mail, if I was short.

Q Excuse me?

A By the mail.

Q You said something about if it was short.

A If I was short I would go down to the office.

Q And for how long a period would it be between the time that you billed Paterno & Sons, Inc. for the services you performed and the time you received the check?

A Well, I wouldn't know. I don't know.

Q What's the largest amount of time thatyou had to wait for payment?

MR. BRILL: This is all speculative,your Honor. I object to it.

THE COURT: Overruled.

Q What was the longest amount of time, Mr. Minichino, that you recall waiting for a check for the services that you performed?

A 60, 90 days.

Q 60 or 90 days.

Now, you said before, Mr. Minichino, that you used the delivery ticket system, is that correct?

A Right.

Q Now, at your firm who would take care of the billing?

A My wife.

Q Andat the firm, would she also have custody of those delivery tickets?

A Oh, yes.

Q And would she use those delivery tickets to compute the invoices?

A Right.

Q Are you familiar or have you ever heard of a trucker by the name of John Aurrichio?

A No.

MR. BRILL: I object to this as hearsay, if your Honor please.

THE COURT: Overruled.

Q Your answer, sir?

A No.

Q Are you familiar or have you ever heard of a trucker by the name of Michael Catenzaro?

MR. BRILL: My objection goes to the entire line with your Honor's permission?

THE COURT: Overruled.

Q You may answer.

A No.

Q Are you familiar or have you ever heard of a trucker by the name of Anthony Ferrotta?

A No.

Q Are you familiar or have you ever heard of a trucker by the name of Arthur Lazravitch?

A No.

Q Are you familiar or have you ever heard of a trucker by the name of Thomas Tuccella?

A No.

Q Did you ever sign the names of those individuals that I just mentioned to any check?

A No.

Q Did you ever cash a check at the 149th Street branch of what was then known as Royal National Bank?

A No.

Q In the trucking business, Mr. Minichino, did you ever hear a firm with the name of Aurrichio in it, a trucking firm?

MR. BRILL: That's objected to, if your Honor please.

THE COURT: On what ground?

MR. BRILL: On the ground it's pure hearsay.

THE COURT: Overruled.

A Yes.

Q What was the name of that firm?

A I don't know the firm, I know it was part of the Aurrichio.

Q Was it Aurrichio and Tuccillo?

A I think that's it.

Q Do you have any idea where they are located?

A No, I don't.

Q Did you ever arrange, Mr. Minichino, for any trucker by the name of Lazravitch, Tuccella, Catenzaro, Aurrichio or Ferrotta to work for Paterno & Sons, Inc.?

A No.

MR. SILVERMAN: I have no further questions, your Honor.

THE COURT: We will take a ten-minute recess.

(Recess)

(In the absence of the jury.)

MR. SILVERMAN: Your Honor, I have just been told by the sister of mone of my witnesses --

THE COURT: We might as well wait for Mr. Brill.

(Mr. Brill arrives.)

THE COURT: All right, Mr. Brill is here.

What were you about to say?

MR. SILVERMAN: I just wanted to inform the Court, your Honor, that Mrs. Ferraro, who was subpoenaed here, was here on Friday -- she lives in New City, New York, and her sister, who was here to testify, informs us that she could not find transportation to get down here. I have an agent driving up there to get here, and she will be here this afternoon.

THE COURT: Do you have other witnesses?

MR.SILVERMAN:I have two other witnesses outside but we might run short.

THE COURT: Is Mrs. Ferraro the last witness in your case?

MR. SILVERMAN: No, your Honor.

THE COURT: I think you should have other witnesses ready to testify, then.

MR. SILVERMAN: The other witnesses will be here this afternoon.

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THE COURT: I want them here this morning. I want the time used efficiently.

MR. SILVERMAN: The other witnesses, your Honor, include the foreman of Mr. Paterno's company, who I expect at 2 o'clock.

THE COURT: Let us get organized. Where are they?

MR. SILVERMAN: Well, they are --

THE COURT: I am not saying whose fault it is. We have a time problem.

MR. SILVERMAN: It will take at least a half hour.

THE COURT: Let us proceed. Are those the only witnesses left in your case?

MR. SILVERMAN: No, your Honor.

THE COURT: Who else do you have?

MR. SILVERMAN: The other witnesses will be here this afternoon, and the rest will be here on Wednesday morning.

THE COURT: Well, without going into who they are, I leave you to decide the order but not to leave blank time. You shouldhave the witnesses here available to fill the time -- if it isn't Witness A, it should be Witness B or Witness C -- I don't care about the order, but the Court's time needs to be used efficiently.

That is your responsibility, and you ought to see to it -- as I will expect you to do that.

Let us proceed, and if you need the help of Mr. Ayres to line up some witnesses, enlist his help and use it.

All right.

(Jury in the box.)

CROSS EXAMINATION

BY MR. BRILL:

Q Mr. Minichino, my name is Brill. We have never had a conversation before, have we?

A No.

Q Would you be good enough to keep your voice up, please?

A I will try.

Q Thank you. I think the last thing you told us about was that you had never arranged for those five truckers whose names were given to you by Mr. Silverman to work or to do any trucking work for Paterno & Sons, do you recall that?

That was just as we were about to break.

THE COURT: If you don't recall, say "no."

THE WITNESS: I don't recall it.

THE COURT: Next question.

Q Is it true there are other truckers whose names you don't recall whom you got to work for Paterno & Sons, Inc.?

A Definitely.

Q And is it true also that among such other truckers they billed Paterno & Sons, Inc. directly?

A Right.

Q Is it true that there are so many that you don't remember the names of all of them?

A That's for sure.

Q Did you tell that to the agents of the Internal Revenue Service and Mr. Silverman as well?

A I certainly did.

Q Do you personally know Mike Paterno?

A Yes.

Q Beg your pardon?

A Yes.

Q Have you seen him at the office on occasion when you went up there to pick up a check?

A No.

Q Did you see him on the job site?

A Yes.

Q Did you see him on Watson Avenue, for example?

A I don't remember.

Q Do you remember a particular job site on which you did see him?

A Yes.

Q Which one?

A Webster Avenue.

Q Webster Avenue. Is it also true, Mr. Minichino, that so far as truckers are concerned like yourself, it did not matter who signed the trucker's ticket just so long as the ticket was signed by somebody?

A Right.

Q I think you said it could have been a laborer or a foreman or the superintendent --

A Right.

Q Or the assistant superintendent of the job?

A Right.

Q They might even have been somebody who wasn't working for Paterno & Sons?

A That's for sure.

Q I think -- well, I will put the question first. You did say to us that you had to wait 60 to 90 days sometimes to get paid; right?

A I would say so, sometimes.

Q Paterno & Sons, Inc. were slow in payments, isn't that true?

MR. SILVERMAN: Objection, your Honor.

THE COURT: Wait a second. What is the question?

(Question read.)

THE COURT: What is the ground?

MR. SILVERMAN: Mr. Brill should describe a particular period, your Honor, of the slowness.

THE COURT: Sustained.

Q All right, during the period about which Mr. Silverman questioned you, from 1965 to 1970, is it true that Paterno & Sons was slow in paying truckers?

MR. SILVERMAN: Objection, your Honor -- the same question.

THE COURT: Wait just a second.

First let me ask counsel to come to the bench for a second.

(At the side bar.)

THE COURT: I have a message from Judge Roberts that he wants Mr. Rosenthal there immediately because he and the press are waiting.

I have conveyed my apologies to him and the press. I think you should know that.

Let us proceed.

(In open court.)

THE COURT: Now let me request, with apologies,

that the last question be read.

(Question read by the reporter.)

THE COURT: Mr. Brill, that is the same question. The word "slow" is a word of indeterminate meaning, and I agree with Mr. Silverman, so you have to put another question.

MR. BRILL: I misunderstood. I thought his objection --

THE COURT: I know you misunderstood; otherwise you would not have repeated the question.

MR. BRILL: No.

THE COURT: So now you do not misunderstand any more, so ask another question.

MR. BRILL: Very good.

BY MR. BRILL:

Q Is it true, Mr. Minichino, that you frequently or that you on many occasions went to the offices of Paterno & Sons, Inc. to collect payment for rental of trucks which you had provided to Paterno & Sons, Inc.?

A Many times.

Q What?

A Many times.

Q And is it true, to your knowledge, that there were many occasions on which your wife also went there --

A Oh, yes.

Q -- to pick up checks?

A Yes.

Q Your wife is the person who runs your office?

A Right.

Q Her name is what, sir?

A Florence.

Q Florence. Now you were asked about trucks that you obtained for Paterno & Sons. Were there trucks on which there were no names?

A Many times.

Q By the way, between 1965 and 1969 where did Taff Trucking garage its trucks?

A In Ozone Park.

Q Was that a garage or a block of garages located at 99th Avenue and 97th Street?

A Yes.

Q In Ozone Park.

A Right.

Q And to your knowledge were there other trucks with which you were not connected that were not owned by your company also garaged there?

A Yes.

Q In fact, there were many trucks?

A Many.

Q -- that used the same truck place or garage?

A That is true.

Q On that same street?

A Yes, because that goes about a mile long.

Q Did you know all those truckers by name?

A No.

Q Can you say that on each one of those trucks owned by such truckers that there was a name on the truck?

A There were no names.

Q As a matter of fact, isn't it true that the trucks, or the Cathcart truck, if it owned only one, was not marked?

A Right.

Q And it also worked on Watson Avenue?

A Right.

Q Now, on Watson Avenue were there other truckers whom you did not know working for Paterno & Sons, Inc.?

A Right.

Q And is that also true with respect to Johnson Avenue?

A Yes.

Q Was it also true with respect to Cedarhurst?

A Right.

Q Did you ever appear before a grand jury in this building?

A No, I don't remember.

Q Well, we have been informed that on June 20,1972 --

THE COURT: Wait.

MR. BRILL: I just want to fix a date.

THE COURT: I don't care what you want to fix. We don't want your recital of information.

Q Does it refresh your recollection --

THE COURT: In that setting I don't want you to do that either. Ask him another question.

Q Did you ever appear before a grand jury in this building in connection with this case?

A Well,if it was this building, I think so.

Q I beg your pardon?

A I think so.

Q I am sorry, I didn't get that.

A I think so.

THE COURT: He said he thinks so.

MR. BRILL: All right.

Q Do you recall when that occurred?

A No, I don't.

Q Was it on or about June 20, 1970?

A I couldn't tell you.

Q Do you remember that before you went into the grand jury room you had a conversation with the prosecutor, who was a person other than Mr. Silverman in this case?

A I really don't remember.

Q Do you remember talking to Mr. Burke before you went into the grand jury room?

A I was talking to somebody but I don't know his name.

Q Was he the man who asked you the questions in the grand jury room?

A I don't remember.

Q Do you remember giving to the man who asked you questions in the grand jury room any papers before you actually went intothe grand jury room?

A No.

Q You don't remember?

A No.

Q To your knowledge did Paterno & Sons, Inc. get trucks from other sources when you couldn't supply them?

A Yes.

MR. BRILL: Thank you. I have no further questions.

Your Honor, could I amend a question with respect to the date of the grand jury? That should have been 1972, not 1970.

THE COURT: Very well.

MR. BRILL: Thank you.

CROSS EXAMINATION

BY MR. ROSENTHAL:

Q Now Mr. Minichino, am I correct that the Watson Avenue job was the first job of any size that you remember doing any work for Paterno & Sons?

A Right.

Q You were beginning with them?

A Right.

Q And they had a lot of work in your field, did they not?

A Oh, yes.

Q Your speciality is dump trucks, as I understand it?

A Right.

Q Or the rental of them?

A Yes.

Q Am I correct in assuming that you were anxious to please?

A Certainly.

Q And if they asked you for a truck or trucks that you did not have available would you reach out and make a very strong effort to get some other trucks?

A Right.

Q Now, sir, did there ever come a time when trucks appeared on the scene on a job, not necessarily Watson Avenue, any job that you were interested in, that was not the particular person you had called to come to work?

A Many times.

Q How would that come about?

A I would call one trucker, and that trucker would call another trucker, and so on, and it keeps going down the line that way.

Q And sometimes it might be three, four, five times removed, is that right?

A More than that too.

Q Now most of the truckers that you have working in conjunction with you, and particularly on Paterno's work, you billed for direct, did you not?

A Yes.

Q And then you paid them?

A Right.

Q However, once in a while a trucker wants to bill directly, is that right?

A Right.

Q And bypass you?

A Right.

Q In fact,you had one that did some work not so long ago by the name of Ash Trucking?

A Right.

Q And he always insists on billing direct?

A Right.

Q I think Mr. Silverman asked you a short while ago whether or not you had ever signed any checks with the name of Aurrichio, Ferrotta, Lazravitch, Catenzaro, and there is one more; is that correct?

A Yes.

Q He asked you that this morning?

A Right.

Q And your answer was no?

A No.

MR. SILVERMAN: Excuse me a second, may I approach Mr. Rosenthal? I want to get something o: the book that I gave him.

THE COURT: Yes.

Q Now, sir, when you were before the Interna Revenue Service, I think it was Special Agent Ayres Agent Rizzo, you were questioned at great length, w not?

A Oh, yes.

Q And there was a stenographer present, some taking down what you said?

A No.

Q You don't recall that?

A The last time I spoke to them, no.

Q What is that?

A The last time I spoke to them, no.

Q I say, do you remember being down at 120 C Street in August of 1971?

A Yes.

Q And do you remember Mr. Ayres, the gentlem sitting here with Mr. Silverman --

A Right.

Q -- asking you questions?

A Right.

Q And you answering him?

A Right.

Q And there was somebody there taking down what you said, was there not?

A Oh, yes, right.

Q Now do you remember at that time Mr. Ayres showing you some invoices? To be specific, do you remember Mr. Ayres showing you Government's Exhibit 6-A, which is an invoice of John Aurrichio dated June 30, 1966 and asking you if you had prepared it and sent it out?

A Right. He did ask me.

Q Do you recall that?

A Yes.

Q What was your answer?

A No.

Q Do you remember him then saying to you that "we" -- meaning Mr. Ayres and Mr. Rizzo and the Internal Revenue Service --

MR. SILVERMAN: Objection, your Honor.

THE COURT: Wait just a second.

MR. ROSENTHAL: I haven't finished.

THE COURT: I know you haven't finished, but you

are off to a bad start. Why should what Mr. Ayres said be admissible here?

MR.ROSENTHAL: If the Court please, I submit that the pressure used by the Internal Revenue Service, an agency of the goverment, upon this witness and other witnesses should be admissible before this jury.

THE COURT:Is that what you are going to elicit, improper pressure?

MR. ROSENTHAL: Yes, sir.

THE COURT: I will allow it; you may attempt to show that.

Q Is that correct, Mr. Minichino?

A Right.

Q Do you recall Mr. Ayres saying to you back in August of 1971 when you were down at 120 Church Street that "we" -- meaning himself, Mr. Rizzo and the Internal Revenue Service --

MR.SILVERMAN: Objection, your Honor. That is an improper way to ask the question. Objection as to form.

THE COURT: Sustained.

Q Do you remember being aked this question and giving this answer --

MR.SILVERMAN: Will you tell me the question you are referring to, please?

MR. ROSENTHAL: What?

MR. SILVERMAN: The question you are referring to.

MR. ROSENTHAL: All right, I will start with Q266 on page 25:

Q "Q Do you know anybody by the name of Michael Catenzaro?

"A No."

Do you remember that question and answer, sir?

A Yes.

Q "Q 267 -- and I will continue right along, Mr. Silverman --

"What address is shown on the invoice?

"A 1167 Allerton Avenue, Bronx.

"Q How far is that from Yates Avenue?

"A I really don't know.

"Q Would it be right around the corner?

"A I really don't know. I really don't know.

"Q Did you have anything to do with this invoice being typed and sent out?

"A Never, never.

"Q Do you recognize the invoice or the name?

"A No, no.

"Q We have information that you do.

"A Never. I swear on my wife and kids, I don't know.

"Q We have information that you do know.

"A I don't know, really. I swear on my kids, I don't know who told you or what, I don't know. I got three kids and I swear on them.

"Q Do you know anything about any invoices at all of this nature?

"A Never. Never.

"Q Did you ever hear any rumors about any truck drivers issuing invoices of this nature?

"A No.

"Q Do you recognize such signature by any chance?

"A No.

"Q Do you recognize the signature John Aurrichio?

"A No.

"Q I am showing you an invoice of Anthony Ferrotta. What is the date of that invoice?

"(Witness looks at aforementioned document.)

"A The date is March 1968.

"Q Do you reocgnize that invoice?

"A No, no.

"Q Do you know who Anthony Ferrotta is?

"A No.

"Q Do you recognize the typing on that invoice?

"A No.

"Q Did you ever cash a check up in the Royal National up at 149th Street and Third Avenue?

"A No.

"Q I am showing you an invoice of Arthur Lazravitch. Do you recognize that invoice" --

THE COURT: Why areyou standing, Mr. Silverman?

MR.SILVERMAN: I object to it. I move to strike all the questions that he has just asked. Nowhere in that, your Honor, is there any indication of pressure by anyone other than the intonation of Mr. Rosenthal's voice.

THE COURT: I am going to let him continue. I have not seen any indication of anything which he is entitled on behalf of his client to call improper pressure either, but I will allow him to finish.

Go ahead.

MR. ROSENTHAL: I am going back to Q283, Mr. Silverman.

BY MR. ROSENTHAL:

"Q I am showing you an invoice of Arthur Lazravitch. Do you reocgnize that invoice?

"A No.

"Q What is the date of that invoice?

"A October 3, 1968.

"Q Do you recognize the typing on that invoice?

"A No.

"Q Do you know anybody connected with Arthur Lazravitch?

"A No."

Now do you remember that series of questions being asked you and those answers being given by yourself?

A Right.

Q Now, you have previously told Mr. Rizzo and Mr. Ayres that you at one time had a truckdriver working for you for I think four or five months by the name of Jerry Lazravitch, is that correct?

A Right.

Q And that was so, was it not?

A Yes.

THE COURT: Well, have you finished the material, Mr. Rosenthal, that you were going to adduce to show improper pressure?

MR. ROSENTHAL: I have not, your Honor.

THE COURT: All right. Let me know when you have.

MR. ROSENTHAL: I will.

Q Yes, starting with 288:

"Q I am showing you an invoice of Thomas Tuccella"--and it's spelled out. "Do you recognize that invoice?

"A No.

"Q What is the date of that invoice?

"A May 31, 1967.

"Q Do you recognize the typing on that invoice?

"A No.

"Q Do you know anybody by the name of Thomas Tuccella?

"A No."

MR. SILVERMAN: Your Honor, I am going to ask for a side bar at this time, your Honor. I have skimmed through the material --

THE COURT: Well, the jury can listen to it. I will rule on your objection when Mr. Rosenthal is through. He has made a representation, which is a serious one, that he would show something that can be characterized as improper pressure. I am going to allow him to complete what he says is the showing of that nature and then I will either rule or comment on it.

BY MR. ROSENTHAL:

"Q From your experience would these people belong to the same local that you belong to?

"A The people you showed me?

"Q Yes.

"A I don't know."

I am now moving to question 297:

"Q I am showing you an invoice of Anthony Ferrotta. What is the date on that invoice?

"A May 1967.

"Q Do you know an Anthony Ferrotta?

"A No.

"Q Do you recognize that invoice?

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"A No.

"Q Do you recognize the typing on that invoice?

"A No.

"Q Were you working on the Watson Avenue job?

"A Yes.

"Q Were there many trucks involved in this job?

"A I don't remember. To be truthful with you, I don't remember."

Now, do you remember when you were down at the Internal Revenue Service, you were asked to write I think ten times --

A Oh, yes.

Q -- the five names that have been mentioned: Catenzaro, Aurrichio, Ferrotta, Tuccella, Lazravitch. Do you remember being asked to do that?

A Yes.

Q And did you do this?

A Yes.

Q And did they keep the samples that you gave of your handwriting with those names?

A Right.

Q Have you ever seen them to this day?

A No.

MR. ROSENTHAL: Will your Honor give me a

momnet.

(Pause)

Q Do you also recall, Mr. Minichino, that when you were before the grand jury in this building, as a witness in this case, you were again asked to furnish examples or exemplars of your handwriting in respect to the five names?

A I don't remember.

Q Now, didyou feel any nervousness at the time you were being questioned down at 120 Church Street?

MR. SILVERMAN: Objection, your Honor. Before we get into this area, the Court --

THE COURT: Into what area?

MR. SILVERMAN: Away from the questions and answers that he gave and the statements that were made to him by the agents, Mr. Rosenthal had made a very serious allegation or has inferred one.

THE COURT: But he said he would tell me when he is through trying to make the necessary showing.

MR. SILVERMAN: I am sorry, I thought he was through with those questions and answers.

THE COURT: You are not through yet, are you, Mr. Rosenthal?

Mr. Rosenthal?

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MR. ROSENTHAL: I am not. I don't know what your Honor's ruling was.

THE COURT: I am referring to your promise that you would let me know when you had completed the line designed to show improper pressure and I assume in overruling Mr. Silverman's objection that you are not yet through.

MR. ROSENTHAL: Your assumption was correct, your Honor, and this question was in line with that.

THE COURT: All right, go ahead.

MR. ROSENTHAL: Thank you.

Q Mr. Minichino, when you were down at 120 Church Street and you were asked the questions that I have read to you and the answers given to you and other questions, did you feel nervousness, were you nervous?

A I wasn't calm.

Q What?

A I wasn't calm.

Q You weren't calm.

And did you feel that pressure was being put on you to answer questions the way the agents wanted you to?

MR. SILVERMAN: Objection, your Honor.

THE COURT: No, I will allow it.

MR. SILVERMAN: The Court said before that you would allow Mr. Rosenthal to ask him what was said to him by the agents.

THE COURT: I am allowing this question.

A Oh,yes.

Q And when the agents told you that they had information that you had typed certain invoices that they showed you, did that upset you?

A Most certainly did.

Q And did you feel that pressure was being applied to you?

A Very much.

Q And when you were asked to give examples of your handwritingand the five names, did that make you feel calm and cool?

A I couldn't write them I was so nervous.

MR. ROSENTHAL: I Have no other questions.

THE COURT: Now, in ruling on Mr. Silverman's objection I would just make a couple of points.

Under the law, ladies and gentlemen, there are rather limited reasons why we may from time to time allow prior questions and answers to be read at a time. Without going into all of that, I have ruled that one such reason might be if such a reading would show what we

are always concerned about, the existence of improper pressure by the government law enforcement officers.

Since the question has been raised so explicitly, and since it's the law that federal judges are occasionally permitted to comment on the evidence, I think it is an appropriate place at which to exercise that power, and I will do so.

For myself, I do not see in that series of questions, leaving aside the tone in which Mr. Rosenthal may have read them, anything that could fairly be deemed improper pressure by law enforcement officers investigating possible internal revenue violations.

I would think especially from the viewpoint of the defendants here on trial that can't be called improper pressure. It seems quite clear to me that these were efforts to negate possibilities that other truckers might have been engaged in behavior of the kind the Internal Revenue Service was interested in.

Now, having said that, I will say further that I have allowed all those questions to be laid before you. I have even allowed this witness to say whether he was nervous and what he felt -- obviously what a person feels is not necessarily a reflection of what other people are doing -- and I say that in the end I will leave it to

you to make your judgment and if you find improper pressure at any material point in this investigation, I will instruct you to rule out any evidence that you find was generated as a result of such pressures, and entirely disregard such evidence insofar as you find the pressure, and insofar as you would otherwise have considered that evidence to be adverse to the interests of any defendants here on trial.

All right.

MR. SILVERMAN: Redirect, your Honor?

THE COURT: Yes.

MR. ROSENTHAL: Your Honor, may I most respectfully except to that portion of your Honor's recent discourse in which you told the jury that you did not -- I think the words were that you did not feel or you did not believe that the questions and answers indicated pressure or improper pressure on the witness. I realize that at the end your Honor told the jury that the question is primarily there is but I most respectfully except to your Honor's telling the jury what your reaction was.

THE COURT: Yes, you have your exception.

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Minichino, a few short questions, sir.

Are you presently still working for Paterno & Sons, Inc.?

A Yes.

Q Mr. Minichino, did you appear, as Mr. Rosenthal had indicated before, before the Internal Revenue Service and were questioned by Agent Ayres and Agent Rizzo, is that correct, sir?

A I am sorry, I don't follow you.

Q Were you questioned by Agent Ayres and Agent Rizzo?

A Yes.

Q At the Internal Revenue Service offices.

A Yes.

Q And at that time a transcription was made of your statements and answers?

A Right.

Q And were you asked these questions and did you give these answers, question 346, 347 --

MR. BRILL: Excuse me, could I object to this,your Honor, in view of the fact there isno foundation laid for this?

MR. SILVERMAN: These questions relate, your Honor, to the questions that Mr. Rosenthal was asking as to the defendant's state of mind and his composure and his feeling at the time that he was being questioned.

THE COURT: All right, overruled.

Q By Special Agent Ayres:

"Q Do you have anything you want to say?

"A As far as what I said before, I knew nothing about the checks. I really don't. I have three kids. I swear on the whole three kids I should not see them again tonight.

"Q Did you appear here at my request?

"A Yes.

"Q Were you threatened by me or anybody else?

"A No. Nervous.

"Q By Revenue Agent Ayres: That's understandable."

MR. ROSENTHAL: Now, that's not a question or answer.

THE COURT: Yes, I will strike out --

MR. ROSENTHAL: It's a side remark.

THE COURT: I will strike out the side remark.

Q Were you asked those questions and did you give those answers, sir?

A Yes. I think so. I don't know.

Q Can't hear you, sir.

A Guess so.

Q What's your best recollection, sir?

A I don't remember really.

Q Sir, is there anything that you stated in response to Revenue Agent Ayres, Special Agent Ayres and Revenue Agent Rizzo's questions on that date at that time was not truthful?

A It was the truth, yes.

Q It was the truth?

A Yes.

Q Was everything you said at that time true?

A I am sure, yes.

Q When you testified before the grand jury, was there anything that you testified to before the grand jury that was not truthful?

A Every thing was truthful.

Q Everything was truthful?

A Yes.

Q Is that your answer, sir? I can't hear you.

A I don't understand what you are trying to

tell me.

THE COURT: He asked you did you tell the truth.

THE WITNESS: Yes, I did.

MR. SILVERMAN: No further questions.

THE COURT: Anything else?

MR. BRILL: Just one question.

RECROSS EXAMINATION

BY MR. BRILL:

Q Did you go to the offices of the Internal Revenue Service merely on a phone call from Mr. Ayres or Mr. Rizzo?

A No.

Q Were you summonsed to go there?

A No.

Q How did you get there, who called you?

A I didn't go there.

Q Pardon?

A I didn't go.

Q No, the first time that you were called, that you were just being asked about.

A It was a summons.

Q In August 26, 1971?

A I don't remember.

Q You don't remember?

A No.

Q Does it refresh your recollection that Mr. Ayres said:

"Did you appear here at my request?"

And you answered, "Yes"?

A I don't remember

MR. BRILL: You don't remember. All right.

Q By the way, between the time that you appeared on August 26, 1971, at the Internal Revenue Offices, and the date on which you appeared befoer the grand jury, did you have an Internal Revenue Service Audit between those two dates?

A Yes, I did.

MR. BRILL: I have no further questions.

MR. SILVERMAN: No questions, your Honor.

THE COURT: All right, Mr. Minichino.

(Witness excused)

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